

3.19.17

Commission's Secretary
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 Federal Communications Commission
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 Deena Shetler: deena.shetler@fcc.gov
 Pam Arluk: Pamela.Arluk@fcc.gov
 FCC Contractor: fcc@bcpiweb.com
 Re: WC Docket No. 06-210
 CCB/CPD 96-20

**Under the Administrative Procedures Act the FCC ONLY Resolves Controversies.
 There are NO Controversies Within the Scope of the 1995 Referred Controversy.**

**AT&T's assertion that there still exists a Section 2.1.8
 Controversy is False, Precluded, and was Based upon 2.2.4
 which Judge Politan Determined has no Merit.**

Petitioners: One Stop Financial, Inc., Winback & Conserve Program Inc., 800 Discounts, Inc., and Group Discounts, Inc. submit the following:

From: Town News [mailto:townnews@optonline.net]

Sent: Sunday, March 19, 2017 2:22 PM

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Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>

Subject: FW: Richard Brown intentional Fraud on Judge Wigenton.

Richard Brown, FCC, State Ethics Staffs

AT&T's attempt to revise the Tr8179 controversy in Judge Bassler's referral is precluded by multiple reasons:

Petitioners will first contact Judge Wigenton and detail each of the frauds AT&T's counsel engaged in. It is petitioner's belief that after petitioner lay out the fraud her Court will fully understand how AT&T scammed her Court silly with no evidence and how AT&T also scammed Judge Bassler.

Judge Wigenton will understand that the FCC was simply not lazy since 2006 not issuing another decision. The FCC has already issued its January 12th 2007 Order detailing why the Judge Bassler referral is moot. As per the Administrative Procedures Act detailed within the January 12th 2007 FCC Order the FCC does not issue declaratory rulings unless it is a controversy within the scope of the original referral.

If Judge Wigenton doesn't understand the AT&T scam, then we will request the FCC reissue the January 12th 2007 FCC Order to clarify it for Judge Wigenton. Petitioners believe the major issue was that her Court saw that the FCC had the case on circulation. Now that the FCC has removed the case from circulation to remove that obstacle Judge Wigenton will understand the case is moot and the only controversy was fraudulent use and it was ruled against AT&T.

If the reissues the Jan12th 2007 Order and Judge Wigenton still does not understand it then the following shows that the Tr8179 issue by law for multiple reasons is precluded:

Petitioners will then request that the FCC issue a Declaratory as per the January 1995 traffic only transfers for both the CCI to PSE traffic only transfer and the Inga to PSE traffic only transfer under both 2.1.8 and 3.3.1.Q Bullet 4. Interpret whether AT&T violated its tariff by subjectively determining defense that substantial traffic only non-plan transfers should be deemed a plan transfer (AT&T's Tr8179 assertion) or a transfer of just the revenue and time commitments AT&T's post DC Circuit controversy.

Here are several reasons why AT&T's Tr8179 argument is precluded from being interpreted by the Commission as a non-controversy and would fail by law due to missing filing deadlines and be precluded under FCC Oct 1995 Order and would fail in any event by tariff law:

- 1) AT&T's Tr8179 "close enough to a plan transfer" defense was not denied in writing as per 2.1.8 (c) within 15 days of the CCI to PSE and Inga to PSE January 1995 traffic only transfers and thus Tr8179 defense is **precluded**. As the non-vacated May 1995 Judge Politan decision stated AT&T filed Tr.8179 on **February 16th 1995** which was more than

15 days after both traffic only transfers. The only written communications on the Inga to PSE traffic only transfer was AT&T's fraudulent use WARNING Letter of February 6th 1995. There was no written denial as per Tr8179 on the CCI to PSE traffic only transfer either. The CCI to PSE traffic only transfer was held up due to the security deposit on the Inga to CCI plan transfer ----which AT&T did have the right to review. Thus, the Inga to PSE traffic only transfer which had no issue of a security deposit on the plan transfer should have been processed first.

- 2) AT&T's post DC Circuit new controversy that 2.1.8 allows traffic only transfers but all 4 obligations must transfer is prohibited by the tariff as an AT&T customer with the remaining non-transferred plan as per CSTPII/RVPP definitions 3.3.1Q must maintain its revenue and time commitments. Since the DC Circuit has determined that 2.1.8 allows traffic only non-plan transfers it has by default already determined that revenue and time commitments do not transfer no matter how much traffic is transferred.
- 3) Within 2.1.8 or 3.3.1.Q bullet 4 there is no rate or regulation in any other tariff section **referred to** such as fraudulent use under 2.2.4, that would give AT&T the authority to determine that it could demand a 2.1.8 plan transfer to force customer plan obligations of revenue and time commitments to transfer. AT&T's Tr8179 argument was not only based upon 2.1.8. AT&T's assertions that Tr8179 were appropriate for 2.1.8 were based upon 2.2.4 Fraudulent use assertions. AT&T would have first needed to have merit under 2.2.4 to effectuate Tr8179 under 2.1.8. AT&T's can't get past 2.2.4 because Judge Politan determined the plans were immune from the shortfall AT&T claimed it suspected. Judge Politan as the FCC's R.L Smith pointed out just assumed it had merit but Judge Politan effectively decided AT&T had no merit to raise a 2.2.4 Fraudulent use defense. So Tr8179 fails on merit. AT&T has already conceded that the plans were pre-June 17th 1994 shortfall and termination immune at the time of the Jan 1995 traffic only non-plan transfers. AT&T stated that it wasn't until March 31st 1996 that the plans were no longer immune and that is an issue that is controversial—as the plans were immune to January 2001.
- 4) Unreasonable under 201 of the 1934 Communications Act as the plans were shortfall immune and had met fiscal year revenue commitments.
- 5) Discriminatory under 202 of the 1934 Communications Act as AT&T allowed thousands of other AT&T customers to order traffic only non-plan transfers in which the revenue and time commitments did not transfer. Subjectively determining fraudulent use intent to force a plan transfer to force revenue and time commitments to transfer would be discriminatory under Tr8179. Tr9229 resolved the discriminatory issue by use of a mathematical formula equally/non-discriminatorily applied to all AT&T customers.
- 6) Under the Administrative Procedures Act the FCC only interprets controversies. Tr 8179 could not have been a controversy in Judge Bassler's court in 2005 as it was withdrawn by AT&T **on June 2nd 1995** and replaced with Tr9229. AT&T counsels Richard Meade conceded to Judge Politan and David Carpenter to Third Circuit that the FCC decided it was not implicit under AT&T's tariff that AT&T can subjectively determine when a traffic only transfer is a plan transfer.

- 7) If AT&T was still considering its Tr8179 assertion a controversy in November 1995 then AT&T was required under the **FCC's October 1995 Order** to meet the substantial cause test for any issues concerning section 2.1.8. Thus AT&T's Tr8179 defense should be precluded for having violated the FCC October 1995 Order. After AT&T's Counsel Meade certified in October 1995 to Judge Politan that AT&T was going in a different direction than Tr8179 with Tr9229, AT&T rose from the dead its Tr8179 position in its brief in 1996 to the FCC---which was covered by the FCC's October 1995 Order that was effective November 1995 through October 1996. Petitioners reply brief to AT&T's 1996 comments was Dated: September 23, 1996 (see attached) ---which of course covers the 1 year substantial cause test period of November 1st -October 31st 1996.
- 8) Judge Politan in 1996 stated that there was **nothing within the tariff that prohibited the transfer** and this included AT&T sole defense of fraudulent use and included AT&T's Tr8179 filing.
- 9) Not a Controversy in Judge Bassler's Court and not explicitly referred to by Judge Bassler in 2006. AT&T created the referral language and added the "other open issues" piece instead of explicitly stating what the controversy was. AT&T knew that Judge Bassler's Court had no Tr8179 controversy so AT&T scammed Judge Bassler into referring what AT&T would argue was a Tr8179 controversy. What petitioners believed Judge Bassler was referring to as "other open issues" was issues concerning penalty infliction (pre-June 17th 1994 immunity, and billing illegal remedy). There was no reason for AT&T to write the referral in this manner other than AT&T trying to assert a Tr8179 controversy in Judge Bassler's Court when none existed since June 2nd 1995. If there actually was a Tr8179 controversy AT&T would have been pleased to explicitly write the referral and **explicitly state** that controversy. When the case went to the FCC in 2006 AT&T argued the Judge Bassler referral did not encompass penalty infliction issues. This led to the Jan 12th 2007 FCC Order that determined the case was moot as the Commission understood it already decided against Tr8179 and AT&T agreed to drop it as of June, 2nd 1995. Under the Administrative Procedures Act the Commission only interpret controversies. The Commission did not rule on Tr8179 because the Commission knew it had already advised AT&T in 1995 when it filed Tr8179 on February 16th 1995 that it was going to deny it. So, AT&T withdrew it and replaced it with Tr9229.
- 10) Judge Politan's non-vacated May 1995 Decision explicitly determined that the outcome of Tr8179 would determine whether AT&T had the subjective ability to determine that a traffic only transfer should be determined a plan transfer. This non-vacated determination coupled with AT&T's withdrawal on June 2nd 1995 also ended the Tr8179 controversy.
- 11) Since the intent of AT&T's determination that customer plan obligations must transfer on a substantial traffic only was due to protecting itself from loss of shortfall charges an evaluation of AT&T's assertion must also take into consideration and explicitly refer whether the former customer had: (a) AT&T plans that had already met is fiscal year commitment, (b) whether the facts of the case show that the traffic only transfer was temporary, (c) whether the non-transferred plans were pre June 17th 1994 exempt from meeting the shortfall obligations at the time of the end-user account movement.

- 12) Did not explicitly state that AT&T had the right to determine when a substantial traffic only non-plan transfer should can be determined by AT&T as a plan transfer. By law tariffs must be explicit or ruled against AT&T.
- 13) AT&T use an illegal remedy as it totally denied all traffic only transfers under 2.1.8 no matter how much traffic was being moved and no matter which obligations were being transferred. So there was no way to transfer less traffic. AT&T issued a letter to petitioners and stated that it would also not allow a 3.3.1 Q bullet 4 transfer due to fraudulent use.
- 14) Under 3.3.1Q bullet 4 AT&T had no control at all if one customer deleted its locations and a different AT&T customer decided to add the customer to its plan. AT&T could not force a customer to keep its end-user locations and not delete the location. AT&T could not prohibit a new customer from adding a customer to its plan. The Commission can also take into consideration that the end-users that would be moved had consented to full Letter of Agency which enabled the Inga Companies to move the accounts to any AT&T discounts plan it wished without the end-users needing a written signature to be added to the PSE plan.
- 15) At the time of the transfer petitioners simply submitted traffic only non-plan orders to move end-user locations from one plan to another. As the 1996 Declaratory Rulings request indicate and Judge Politan stated petitioners did not care whether section 2.1.8 or any other section either allowed it or did not prohibit it the movement of traffic without the plans. In petitioner's order, there was **no stipulations** made upon AT&T as to which obligations should or shouldn't transfer. Thus, any future determination by the FCC or DC Circuit is moot as petitioners were simply looking to retain the pre-June 17th 1994 plans that can be upgraded into a new Contact tariff w/o posting security deposit. Thus, was Judge Bassler referral moot in that respect as well. AT&T claimed post DC Circuit that 2.1.8 allowed traffic only transfers if the revenue and time commitment transfer. AT&T also claims that this was its position in January 1995. AT&T's fraud makes no sense because with no obligation allocation stipulations made upon AT&T in the Jan 1995 orders ---AT&T had no reason to transfer the locations and transfer the revenue and time commitments if that is actually what AT&T believed its 1995 section 2.1.8 tariff mandated. Obviously, we know AT&T did not believe revenue and time commitments must transfer as AT&T was asserting under 2.2.4 fraudulent use that revenue and time commitments do not transfer on a traffic only transfer. We also see that the February 16th 1995 Tr8179 language that AT&T required the **PLAN** to transfer. AT&T did not write the proposed Tr8179 language to transfer the revenue and time commitments but not the plan. AT&T scammed Judge Bassler in 2005 into believing that it had always been AT&T's position that 2.1.8 allowed traffic only transfers but all the obligations (revenue and time commitments) must transfer. If that were the case in 1995 AT&T would not have written Tr8179 to force a **plan** transfer as AT&T knew that under the tariff you can't have a traffic only transfer without transferring the entire plan.

If you look through the petitioners 1996 FCC filing, you will see what was actually referred to the FCC.

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Petitioners filed for reconsideration with the District Court because AT&T had surreptitiously withdrawn Transmittal 8179 on **June 2, 1995**, giving no notice to Petitioners that it had done so. Upon learning of AT&T's action, Petitioners evaluated the effect of that action on the District Court's decision to apply the doctrine of primary jurisdiction. Petitioners determined that AT&T's withdrawal had removed the basis for the application of the doctrine, leaving in place only those pre-8179 tariff provisions which in no way addressed, much less prohibited, fractionalization of CSTP II plans.

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Judge Politan simply wanted to know whether 2.1.8 allowed traffic only transfers. He did not see in in 1995 within section 2.1.8 the language that "any number" of locations could be transferred. Judge Politan did not have an issue with fraudulent use as his Court understood the plans were pre-June 17th 1994 immune from shortfall. Judge Politan was waiting on Tr8179's resolution to determine whether 2.1.8 allowed traffic only transfers. When Tr8179 was withdrawn by AT&T on June 2nd 1995 that ended the Tr8179 controversy. The non-vacated 1995 May Decision noted that the plans were pre-June 17th 1994 immune. By 1996 Judge Politan with the concessions by AT&T counsel Meade that Tr8179 was dropped and evidence showing other aggregators doing traffic only non-plan transfers issued the injunction determining that NOTHING prevented traffic only transfers and AT&T's fraudulent use defense was "unsubstantiated" because the plans were pre June 17th 1994 immune.

"AT&T's next perversion of the facts concerns its version of what the District Court "referred" -- the "application" of Section 2.1.8 as well as its "interpretation". AT&T is incorrect. The District Court never made such a statement or ruling.

In support of its version of the referral, AT&T states that:

[t]he Court held that the issue of whether AT&T's tariff "permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction," as applied to this case, where "AT&T believes these transfers are an effort by the principal of the Inga companies to evade annual commitments to AT&T in such manner as to escape liability for any shortfall and termination charges which might otherwise arise on those plans," should be referred to the FCC under the doctrine of primary jurisdiction.

AT&T has deliberately misaligned the Court's statements to create a fictitious version of the Court's position. The first phrase in the quote above is from page 15 of the Court's May 19, 1995 Order (Exhibit B) under the subheading of "primary jurisdiction." What the Court actually said is: "However, as to the CCI/PSE transfer, the issue hinges on whether section 2.1.8 permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction." The Court did not mention "as applied to this case." The second quoted phrase in the paragraph above regarding AT&T's beliefs that Petitioners were evading commitments was not even contained in the same section of the Court's opinion; it came out of a footnote to a different discussion three pages earlier, on page 12."

As the above shows, there was no referral as per Tr8179. So, petitioners will file Motion for Sanctions and file Motion to lift the stay as the FCC under the Administrative Procedures Act does not have any open controversies to interpret that were within the scope of the original referral.

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Group Discounts, Inc.

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Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>
Subject: RE: Richard Brown intentional Fraud on Judge Wigenton.

Richard Brown

Please confirm receipt

AT&T counsel is violating:

4.2.A.1 Standards for Making Representations to the Court: Rule 11(b) provides that, "[b]y presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the **best of the person's knowledge**, information, and belief, formed **after an inquiry reasonable under the circumstances**" that the material presented is not filed for an improper purpose and has the **requisite degree of evidentiary** and legal support. This amendment "subject's litigants to potential sanctions for **insisting upon a position after it is no longer tenable**."

- 1) AT&T has not produced evidence showing that on a traffic only transfer the revenue and time commitments transfer; this is so because **no evidence exists**.
- 2) AT&T counsel Fred Whitmer advised Judge Politan that AT&T had done **thousands** of traffic only transfers and the revenue and time commitments did not transfer.
- 3) AT&T misrepresented to Judge Wigenton that AT&T addressed at the FCC why all other AT&T customers are transferring traffic only and the revenue and time commitments do

not transfer---but of course AT&T obviously did not and can't produce any evidence as none exists.

- 4) AT&T understood in January 1995 for both the CCI to PSE and Inga Companies traffic only transfers, that there was **no violation of section 2.1.8**. AT&T filed at the FCC Tr8179 and conceded that petitioners were ordering a traffic only transfer. Under Tr8179 AT&T asserted to the FCC that for substantial traffic only transfers AT&T had the implicit right under 2.1.8 to force a **plan** transfer to force the revenue and time commitments to transfer. The FCC determined that it was not implicit within 2.1.8 that AT&T can force a plan transfer when it was a traffic only transfer. The FCC advised AT&T that it did not want AT&T to subjectively determine when it could force a plan transfer. So, AT&T dropped Tr8179 and replaced it with Tr9229 that prospectively became the deposit requirement against potential shortfalls when substantial traffic only was transferred.
- 5) Judge Politan's non-vacated 1995 May 1995 Decision determined the outcome of Tr8179 would determine whether AT&T had the right to subjectively determine that petitioners traffic only transfer was a plan transfer.
- 6) There was never a controversy in January 1995 between the parties that 2.1.8 allowed traffic only transfers and the revenue and time commitments do NOT transfer. The parties agreed that ONLY on PLAN transfers do the revenue and time commitments also transfer.
- 7) AT&T creates new controversy in 2005 in Judge Bassler's Court that revenue and time commitments must transfer on a traffic only transfer. Judge Bassler recognizes that AT&T has no evidence and petitioners had evidence showing that on traffic only transfers the revenue and time commitments do not transfer. Judge Bassler states this could be determined discrimination and states the parties are going to end up back in NJFDC. Judge Bassler does not realize that all other AT&T customers were not transferring revenue and time commitments on a traffic only transfer BECAUSE that is what is mandated by 2.1.8.
- 8) AT&T scams Judge Wigenton that AT&T would have transferred the locations but since the notations on the AT&T Transfer of Service form stated petitioners were requesting a Traffic Only Non-Plan transfer it violated 2.1.8. What AT&T failed to explain to Judge Wigenton was that AT&T's assertion to the FCC in 1996 of violating 2.1.8 was IF the transaction was a **PLAN** TRANSFER. AT&T had already lost Tr8179 in 1995 and conceded petitioners transaction was traffic only transfer and Judge Politan's 1995 Decision explicitly states that Tr8179 will determine whether the substantial traffic only transfer needs to be classified as a PLAN transfer but AT&T in 1996 asserts petitioners violated 2.1.8 IF IT WAS A PLAN TRANSFER.

DC Circuit Decision page 8 quoting AT&T's brief to the FCC:

AT&T, however, argues persuasively that the FCC misinterpreted its comment. Immediately following the alleged concession, AT&T's submission noted that:

[Section 2.1.8], by its terms, allows a transfer of CCI's service to PSE only if PSE agreed to assume all obligations under those **plans**. *Yet CCI explicitly amended the transfer of services form to read "Traffic Only."* By expressly declaring that it did not intend to effectuate a transfer of all obligations under the **plans** to PSE . . . *the proposed transfer, on its face, violated the terms of Section 2.1.8.*

Comments of AT&T Corp. at 10–11 (emphasis added) (citation omitted). It appears quite clear, then, that **AT&T did not concede the inapplicability of Section 2.1.8 to transfers of traffic only.**

The DC Circuit understood that AT&T was arguing that UNDER A **PLAN** TRANSFER all the obligations transfer. The DC Circuit erred in not understanding that AT&T only had 15 days to raise a defense under 2.1.8 (c) and AT&T's Tr8179 filing to decide if a traffic only transfer could be considered a **plan** transfer was FCC filed on February 16th 1995 as the May 1995 Judge Politan non-vacated Decision explicitly determined. Additionally, that May 1995 decision determined that the outcome of AT&T failed Tr8179 was to decide whether AT&T already an implicit right within 2.1.8 to allow AT&T to mandate that a substantial traffic only transfer can be determined as a plan transfer. The only way AT&T could force the revenue and time commitments to transfer was if it were a PLAN transfer as in the Inga Companies to CCI **PLAN** transfer. In a plan transfer the new customer must assume all obligations of the **FORMER** CUSTOMER and thus the customer plan commitments (revenue and time commitments) must transfer on a plan transfer. On a traffic-only, non-plan transfer there isn't a **FORMER** AT&T CUSTOMER of the plan as the plan and its customer remain an AT&T customer and thus the customer plan obligations of plan (revenue and time commitments) must stay with the non-transferred plan. So, AT&T raised a defense that was barred by the 15-day filing requirement with 2.1.8 (c) and lost that Tr8179 FCC argument in any event.

AT&T provided zero evidence to the DC Circuit within 15 days that it was denying the traffic only transfers for violating 2.1.8 for any reason. The non-vacated May 1995 decision explicitly stated that outcome of Tr8179 would resolve the Substantial traffic transfer controversy of whether AT&T can say a traffic only transfer is a plan transfer and AT&T lost that FCC determination. AT&T withdrew Tr8179 and moved on to Tr9229 security deposit against potential shortfall October 1995 AT&T counsel Richard Meade certification to Judge Politan but AT&T asserted it again 1996 to the FCC.

- 9) AT&T was not asserting in 1996 to the FCC that under 2.1.8 it was a violation of 2.1.8 to not transfer the revenue and time commitment on a TRAFFIC ONLY transfer –AT&T in 1996 was misrepresenting the transaction was a plan transfer and under that misstatement of facts that as a PLAN transfer it would violate 2.1.8 if the revenue and time commitments did not transfer.
- 10) AT&T would not have needed to misrepresent to the FCC in 1996 that the transfer was a **PLAN** transfer instead of a traffic only transfer if revenue and time commitments actually did transfer on a traffic only transfer. There would have been no need to file Tr8179 to force a plan transfer when substantial traffic only was transferred.
- 11) AT&T has **no written evidence** within the first 15 days as per 2.1.8 (c) that the traffic only transfers were being denied for violating 2.1.8. **as a traffic only transfer.** Obviously in 1995 AT&T was only asserting to the FCC under Tr8179 and under 2.2.4 fraudulent use that traffic only transfers require the non-transferred plan to keep its revenue and time commitment.
- 12) The Traffic Only non-plan transfer sentence added to 2.1.8 to advise AT&T that this was a traffic only transfer as opposed to a **PLAN** transfer does not even mention anything regarding any mandate made upon AT&T to modify which obligations transfer under

- 2.1.8. **IF** 2.1.8 actually mandated in January 1995 that revenue and time commitments transfer on AT&T's Tr8179 conceded traffic only transfer ---then why didn't AT&T simply transfer the revenue and time commitments?
- 13) AT&T's "Traffic Only" notation fraud on Judge Wigenton makes no sense in any event as AT&T would have simply processed the transfer if that is what 2.1.8 mandated.
 - 14) There's simply **no evidence** within the first 15 days for both the CCI to PSE and the Inga Companies to PSE traffic only transfers, that AT&T denied these traffic only transfers, based upon any violation of 2.1.8. AT&T's 1996 FCC assertion that the DC Circuit Court picked up on was 2.1.8 was violated **IF** it was a PLAN Transfer. AT&T simply scammed Judge Wigenton by asserting it was its position on a TRAFFIC ONLY transfer that 2.1.8 was violated and even referenced what the FCC and DC Circuit Court when in fact it was based upon the misrepresentations that the transactions were PLAN transfers and not Traffic Only transfers.
 - 15) Obviously AT&T in January 1995 was asserting that for TRAFFIC ONLY TRANSFERS that revenue and time commitments DO NOT TRANSFER under 2.1.8 when asserting 2.2.4 fraudulent use and Tr8179 and later Tr9229---AND---and there AT&T Obviously could not have been not **simultaneously asserting** in January 1995 that it was a violation of 2.1.8 NOT TO TRANSFER revenue and time commitments.
 - 16) AT&T clearly understood that 2.1.8 mandates the non-transferred customer plan commitments of revenue and time commitments and their associated liability of shortfall and termination charges **must stay** with the non-transferred plan. The intentional fraud on Judge Wigenton was to simply reference a statement AT&T made to the FCC in 1996 way after the transfer---and was based upon a misrepresentation of the facts of the case being a plan transfer not a traffic only transfer---and asserting the Judge Wigenton that AT&T would have processed the traffic only transfer transaction in 1995 but for the Notations to transfer traffic only and not the plan.
 - 17) There was no controversy between the parties in January 1995 that under section 2.1.8 revenue and time commitments do not transfer on a traffic only transfer as these customer plan commitments only transfer on a PLAN Transfer ---and this is why AT&T's misrepresented to the FCC in 1996 that the traffic only transfers were plan transfers---after having already conceded in Jan 1995 under Tr8179 and 2.2.4 fraudulent use that the transactions were traffic only transfers.
 - 18) The FCC in January 2007 properly determined that under the Administrative Procedures Act it can only resolve **controversies** and thus determined "The district court's June 2006 order does not expand the scope of the issue previously presented."

"As discussed in the 2003 Order on Primary Jurisdiction Referral, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to **terminate a controversy or remove uncertainty**. When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to **assist the referring court** by resolving issues arising under the Act. That is our goal here. The district court's June 2006 order **does not expand the scope of the issue previously presented**. **Rather**, we have been asked to interpret the scope of section **2.1.8** of AT&T's Tariff No.2, a matter **already extensively briefed by the parties**." **FCC Jan 12th 2007 Order Pg. 2 para 3 Exhibit B**

- 1) As the Non-Vacated 1995 Judge Politan Decision stated the controversy as per whether AT&T had the implicit right under 2.1.8 to force a plan transfer was resolved when AT&T withdrew its Tr8179 FCC filing on the behest of the FCC.
- 2) The fraudulent use controversy was settled by the DC Circuit Court that decided that it would be a violation of fraudulent use if there weren't any obligations transferred. Petitioners transferred the only two listed within 2.1.8.
- 3) There was never a controversy between the parties as per the allocations of obligations under section 2.1.8 for either traffic only transfers OR plan transfers—the parties agreed the only time the revenue and time commitments transfer is on a PLAN transfer—that's why AT&T misrepresented in 1996 the transfer was a plan transfer—that's why AT&T filed Tr8179 to retroactively change 2.1.8.

AT&T is not providing the requisite degree of evidentiary evidence to support its “all obligations transfer on a traffic only transfer” position to Judge Bassler because **no evidence** exists. Obviously AT&T as per its counsel Fred Whitmer has thousands of traffic only transfers.

It was an intentional fraud with attempt to cover-up the fraud that AT&T counsels pulled on Judge Bassler and tried on the FCC in 2006 and are still insisting upon today in Judge Wigenton's Court.

AT&T in house and outside counsels obviously have not made as per Rule 11 (b) an inquiry reasonable under the circumstances. AT&T in house and outside counsels obviously have not as per Rule 11 (b) requisite degree of evidentiary and legal support. AT&T in house and outside counsels have clearly violated Rule 11 (b) for insisting upon a position after it is **no longer tenable**.

AT&T business executives are involved in an intentional fraud on Judge Wigenton and are trying to pull off the fraud with NO EVIDENCE of any transactions and no evidence of any letters to petitioners denying he traffic only transfers based **upon violating section 2.1.8**.

The only letter from AT&T Counsel Frederick Whitmer on February 6th 1995 was a **fraudulent use** warning letter. The letter was not a written denial as per 2.1.8 (c). It was a warning that AT&T would take legal recourse if it was the Inga Companies were trying to avoid meeting the revenue commitments on the non-transferred plan---as AT&T agreed with the Inga Companies that revenue and time commitments do not transfer under 2.1.8 on traffic only transfers.

In summary AT&T has no evidence because none exists and is in clear violation of:
4.2.A.1 Standards for Making Representations to the Court: Rule 11(b)11b.

AT&T counsels simply scammed Judge Wigenton. There is a reason why AT&T counsel has not responded to the recent emails that outlined AT&T counsel's fraud on Judge Wigenton that INCLUDED all FCC staff---and included the FCC Ethics Staff, the DC Circuit Court's Ethics staff, the DC Bar Ethics Staff and the NJ Office of Attorney Ethics Staffs.

Despite asking AT&T counsel Mr Brown to acknowledge receipt of the FCC Comments AT&T counsel Mr Brown no longer will even acknowledge receipt of the FCC public comments.

Mr Brown next week petitioners will file motion for sanctions. Petitioners could file now but petitioners want to show Judge Wigenton that AT&T was given ample opportunity to produce evidence but can't –because none exists –it was nothing more than an intentional fraud with attempt to cover-up the fraud on Judge Wigenton.

The case technically ended in 2005 with the DC Circuits decision on the only controversy of fraudulent use. However, even if the petitioners lost the fraudulent use controversy it is moot anyway as the FCC pointed out. AT&T had no merit in raising a fraudulent use defense in the first place as AT&T has conceded that the plans were pre-June 17th 1994 grandfathered at the time of the January 1995 traffic only transfer and thus immune from the shortfall and termination charges AT&T claimed it suspected. Judge Politan's May 1995 Decision determined the plans were pre-June 17th 1994 immune—so any FCC and DC Circuit Decision against petitioners would not have made a difference.

The FCC as pointed as the FCC January 12th 2007 Order properly determined there weren't any controversies to determine that were within the scope of the 1996 referral having to do with a question regarding which obligations transfer. The May 1995 non-vacated Judge Politan decision explicitly determined that the outcome of Tr8179 would resolve AT&T's assertion that it could consider petitioners substantial traffic only non-plan transfer a **plan** transfer. Judge Politan did not take into account that Tr8179 was also filed late –after 15 days.

Thus, Judge Bassler's referral is moot as there are no controversies between the parties that were within the scope of the original referral for the FCC to decide.

Al Inga President
Group Discounts, Inc.

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Sent: Saturday, March 11, 2017 4:57 PM

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Subject: RE: Richard Brown intentional Fraud on the NJFDC....

Richard

This is AT&T's position to the DC Circuit Court:

---AT&T reply brief to DC Circuit pg 9:

"Section 2.1.8 "addresses" the transfer of end-user traffic without the associated liabilities."

Petitioners agree that 2.1.8 addresses traffic only transfers without the liabilities which the parties agreed in 1995 were the revenue and time commitments and their associated liabilities (Shortfall and termination) for not meeting those customer plan obligations.

AT&T's counsel Friedman advised the FCC in 2003 that the termination penalties were not a concern of AT&T's because petitioners were not terminating its plans.

FCC page 8 FN 56:

"Opposition at 5. Although AT&T also argues that the move also avoided the payment of tariffed *termination* charges, *id.*, it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) is not at issue here. Opposition at 3 n.1. That is consistent with the facts of this matter; petitioners never terminated their plans. Accordingly, termination charges are not at issue in this matter."

AT&T was confirming that the termination commitment stayed with the non-transferred plan under section 2.1.8 but AT&T did not present that as a controversy of speculation of being deprived of collecting termination charges as per AT&T's fraudulent use speculation because the plans were not being terminated. AT&T's 2005 brief to the DC Circuit is clearly stating 2.1.8 allows traffic only transfer without the associated liabilities agreeing with its AT&T counsel Friedman's position to the FCC in 2003. Yet you advised Judge Bassler and Judge Wigenton that IT HAS ALWAYS BEEN AT&T's position that 2.1.8 mandates the revenue and time commitments must transfer on a traffic only transfer.

AT&T's brief to the DC Circuit also pointed out exactly where in section 2.1.8 it allows traffic only transfers agreeing with petitioners.

As you are aware the DC Circuit despite AT&T having detailed where in section 2.1.8 it allowed traffic only transfers said it did not see it on its face:

DC Circuit Page 7:

"The Section on its face does not differentiate between transfers of entire plans and transfers of traffic, but rather speaks only in terms of WATS — the telephone service itself."

But as you pointed out to the DC Circuit and petitioner agreed what the DC Circuit overlooked was it allowed ANY NUMBER singular or PLURAL.

FCC 2003 Order page 6 FN 46:

Transfer or Assignment – WATS, including **any** associated telephone **number(s)**, may be transferred or assigned to a new Customer, provided that:

- A. The Customer of record (former Customer) requests in writing that the Company transfer or assign WATS to the new Customer.
- B. The new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include (1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).
- C. The Company acknowledges the transfer or assignment in writing. The acknowledgement will be made within 15 days of receipt of notification.

So, Richard even though the DC Circuit did not actually see on its FACE why 2.1.8 allowed traffic only non-plan transfers AT&T and petitioners have always agreed that 2.1.8 does allow traffic only transfers as AT&T asserted to the DC Circuit Court. So, the DC Circuit got it correct even though it did not see it on its face. But no harm no foul the DC Circuit was only there reviewing the FCC decision on fraudulent use.

But DC got it right:

The DC Circuit Decision stated on pg.8:

Absent such reliance, the commission provides us with little reason why the plain language of Section 2.1.8 fails to encompass **transfers of traffic alone.**

and the DC Circuit Decision stated on pg.10:

As the foregoing discussion indicates, we find the Commission's interpretation implausible on its face. First, the plain language of Section 2.1.8 encompasses all transfers of WATS, and **not just transfers of entire plans.**

Obviously since the DC Circuit got it correct that 2.1.8 allowed traffic only transfers that means by default **it must take the position** and agree with the 1995 -2005 positions of AT&T, petitioners, and the FCC and Judge Politan's that revenue and time commitments do not transfer.

AT&T counsel Friedman to the FCC in 2003:

As AT&T's customers-of-record, Petitioners were responsible for the tariffed shortfall and termination charges. Section 3.3.1.Q of AT&T FCC No 2 See also AT&T Further Comments filed April 2nd 2003 ("AT&T's Further Comments 2003") at 7-8.

Mr. Friedman is correct. You can't transfer traffic and keep the plan and no longer have any obligations. If the plan is kept by definition the party is still an AT&T customer of Record and must as per 3.3.1Q CSTPII/RVPP definitions must as AT&T counsel Friedman stated to the FCC keep its shortfall and termination charge responsibilities.

Given the fact that the parties agreed going into the DC Circuit that 2.1.8 allowed traffic only transfers and agreed that the revenue and time commitments did not transfer these items are NON CONTROVERSIES. Even though the DC Circuit did not understand on its face that 2.1.8 allowed traffic only transfers and was totally confused as to which obligations transfer ----ONCE it determined that 2.1.8 allowed traffic only transfers it had to BY DEFAULT determine the non-transferred plans MUST KEEP ITS COMMITMENTS as CSTPII/RVPP Definitions as AT&T counsel Friedman pointed out!!!

Under the Administrative Procedures Act the FCC will only interpret controversies within the scope of the original referral. The original referral the parties agreed that 2.1.8 allowed traffic only transfers and agreed the shortfall and termination liabilities stayed with the non-transferred plan.

So the fraud that you and Joey Guerra created in Judge Bassler's Court regarding which obligations transfer is outside the scope of the original referral as there was no controversy as per 2.1.8. The DC Circuit having decided that 2.1.8 allows traffic only transfers even though it did not see it means by default the DC must determine the obligations don't transfer as per 3.3.1.Q. Simply put an AT&T CSTPII/RVPP CUSTOMER by definition MUST HAVE A COMMITMENT between \$600,000 to \$33 million. You can't be a AT&T CSPTII/RVPP customer without a revenue and time commitment!!! You can't transfer away the commitment UNLESS You transfer AWAY THE ENTIRE PLAN and are a FORMER AT&T customer of the PLAN. The new customer must assume all obligations of the **FORMER** AT&T CUSTOMER that no longer has a plan. That you knew, so you called the day after to see how much money petitioners wanted to settle before the cover-up of the language was exposed.

So, Judge Bassler's referral CAN'T be decided by the FCC as the parties CLEARLY AGREED in 1995 and going into the DC Circuit Court that 2.1.8 allowed traffic only transfers and the revenue and time commitments MUST stay with the non-transferred

plan. The FCC only determines controversies and there was no controversy as per 2.1.8. The only controversy was 2.2.4 fraudulent use.

That is why the FCC can't rule. But you knew that. That is why AT&T opposed the FCC reissuing the January 12th 2007 Order---because Judge Wigenton did not understand the case is moot---by law the FCC can't rule on non-controversies.

The FCC is not lazy -----The Judge Bassler referral is MOOT! That is why the FCC has not and can't by law rule on non-controversies.

Al Inga President
Group Discounts, Inc.

From: Town News [<mailto:townnews@optonline.net>]

Sent: Saturday, March 11, 2017 3:14 PM

To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.O'RIelly@fcc.gov' <Mike.O'RIelly@fcc.gov>; 'Nancy_Dunn@cadc.uscourts.gov' <Nancy_Dunn@cadc.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'martha_tomich@cadc.uscourts.gov' <martha_tomich@cadc.uscourts.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'Frank Arleo' <Frank.Arleo@arleodohue.com>; 'Nicholas.Degani@fcc.gov' <Nicholas.Degani@fcc.gov>; 'nick.degani@fcc.gov' <nick.degani@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'Amy.Bender@fcc.gov' <Amy.Bender@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deanne.Erwin@fcc.gov' <Deanne.Erwin@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'laynede@dor.state.fl.us' <laynede@dor.state.fl.us>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'MeredithAttwell.Baker@fcc.gov' <MeredithAttwell.Baker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>

Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>

Subject: RE: Richard Brown intentional Fraud on the NJFDC....

Richard

Thank you for confirming receipt.

Al Inga President

Group Discounts, Inc.

From: Brown, Richard H. [<mailto:rbrown@daypitney.com>]
Sent: Saturday, March 11, 2017 2:41 PM
To: 'Town News' <townnews@optonline.net>
Cc: ray@grimes4law.com
Subject: RE: Richard Brown intentional Fraud on the NJFDC....

Received

From: Town News [<mailto:townnews@optonline.net>]
Sent: Saturday, March 11, 2017 11:39 AM
To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.O'Rielly@fcc.gov' <Mike.O'Rielly@fcc.gov>; 'Nancy.Dunn@cadc.uscourts.gov' <Nancy.Dunn@cadc.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.ingle@fcc.gov' <john.ingle@fcc.gov>; 'martha_tomich@cadc.uscourts.gov' <martha_tomich@cadc.uscourts.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'Frank Arleo' <Frank.Arleo@arleonohue.com>; 'Nicholas.Degani@fcc.gov' <Nicholas.Degani@fcc.gov>; 'nick.degani@fcc.gov' <nick.degani@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'Amy.Bender@fcc.gov' <Amy.Bender@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deanne.Erwin@fcc.gov' <Deanne.Erwin@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.ingle@fcc.gov' <john.ingle@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'laynede@dor.state.fl.us' <laynede@dor.state.fl.us>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'MeredithAttwell.Baker@fcc.gov' <MeredithAttwell.Baker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>
Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>
Subject: RE: Richard Brown intentional Fraud on the NJFDC....

Richard Brown

Please reply all and confirm receipt. I will upload these comments and you are welcomed to respond.

AT&T counsel is violating:

4.2.A.1 Standards for Making Representations to the Court: Rule 11(b) provides that, “[b]y presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the **best of the person's knowledge**, information, and belief, formed **after an inquiry reasonable under the circumstances**” that the material presented is not filed for an improper purpose and has the **requisite degree of evidentiary** and legal support. This amendment “subject’s litigants to potential sanctions for **insisting upon a position after it is no longer tenable**.”

AT&T is not providing the requisite degree of evidentiary evidence to support its “all obligations” position because none exists. AT&T continues to insist **upon a position after it is no longer tenable**.

Below is additional evidence outlining the intentional fraud on Judge Bassler and Judge Wigenton:

Judge Politan’s May 1995 Order detailed that after the deposit requirement on the plan transfer from Inga Companies to CCI was resolved **the only controversy** was fraudulent use.

Here are the facts:

Judge Politan’s Confirms AT&T sole defense was fraudulent use:

On January 13, 1995, PSE and CCI jointly executed and submitted written orders to AT&T to transfer the 800 traffic under the plans CCI had obtained from the Inga companies to the credit of PSE. Only the traffic was to be transferred, not the plans themselves. In this way, **CCI would maintain control over the plans** while at the same time benefiting from the much larger discounts enjoyed by PSE under KT-516. AT&T refused to accept this second transfer on the ground that CCI was not the customer of record on the plans at issue, and thus could not transfer the traffic under those plans to PSE. **AT&T was further troubled** by the fact that if **only the traffic on the plans and not the plans themselves were transferred to PSE**, the liability for **shortfall and termination charges attendant thereto would then be vested in CCI**: an empty shell in AT&T's view.” (1995 Decision pg. 10 para 2

AT&T counsel Meade **page 5-6 para 11**

“In particular, we discussed an **alternative approach** by which AT&T's concern would be met by **requiring a deposit** (either in cash or by letter of credit) in the amount of the **projected shortfall charge** that would apply as a result of the **location transfer**. The FCC was receptive to this approach, but noted that it would represent a **significant change** from the pending filing and that it would be appropriate to make that change as a new transmittal, thereby providing interested parties with a new opportunity to state objections. **The Commission asked that AT&T withdraw Transmittal 8179 and submit the new approach as a new filing.**”

AT&T counsel Carpenter conceded to Third Circuit (Oral Pg. 43) the FCC Rejected Tr8179:

“The FCC asked us to withdraw the complaint because the FCC thought we had done **more** in the tariff language **than codify** what the tariff already meant.”

AT&T’s sole defense was fraudulent use under 2.2.4, there was no AT&T controversy under 2.1.8 when AT&T lost its retroactive attempt to “clarify” what it asserted it believed 2.1.8 allowed it to do. AT&T asserted under its Tr8179 filing that 2.1.8 allowed AT&T to force a plan transfer when a substantial traffic only transfer was ordered. AT&T advised the FCC that forcing they PLAN to transfer was the only way it could force the customer plan commitments (revenue and time commitments) to transfer---and of course the potential shortfall and termination charges on those customer plan commitments.

The following is AT&T counsel Richard Meade conceding that the controversy of whether AT&T had the right to decide if a substantial traffic only transfer was a plan transfer had been defeated by the FCC and this controversy ended. AT&T counsel Meade explains that AT&T replaced Tr8179 with Tr9229 which became AT&T’s solution to protect itself from exposure to not being able to collect shortfall charges on the non-transferred plan when substantial traffic was transferred away from those non-transferred plans. AT&T added security deposits against potential shortfall on the non-transferred plan acknowledging that the revenue commitments do not transfer on a traffic only non-plan transfer.

AT&T counsel Richard Meade 1996 certification to NJ District Court Judge Politan pg.7 para 15:

“On October 26th 1995, AT&T Corp. filed Tariff Transmittal No 9229 with the FCC. Transmittal No 9229 addresses the problem implicated in the **CCI-PSE transfer---** **the segregation of assets (locations) from liabilities (plan commitments)** --- in the following manner.


Above AT&T counsel is conceding that when just end-user locations transfer--- but not the plan--- the liabilities (revenue and time commitments) stay with the non-transferred plan. AT&T’s “problem” was 2.1.8 mandated that as long as the main billed telephone number remained on the non-transferred plan the revenue and time commitments must not transfer.

Meade certification to Judge Politan pg.7 para 16

The Deposit for Shortfall Charges included in Transmittal No. 9229 is a “**new concept**” that meets **AT&T’s business concern** more directly, without addressing the question of **intent**. Because this is **new**, it will **apply** only to newly ordered term plans, and so would **not be determinative** of the issue presented on the **CCI/PSE transfer**.

Above counsel Meade is addressing the FCC's concern that AT&T was attempting with the previous Tr8179 filing to subjectively measure INTENT of the former customer. The FCC under Tr8179 was not going to allow AT&T to subjectively determine when a traffic only transfer meets AT&T's subjective threshold to be deemed a PLAN TRANSFER---to force the customer plan obligations to transfer. AT&T counsel Meade conceded the October 26th 1995 change to 2.1.8 was new and was not determinative on petitioners January 1995 transfer. As you are aware any substantive changes to a tariff are prospective. Thus, although the tariffs terms and conditions still applied to petitioners the added security deposit against potential shortfall was not a requirement upon petitioners as it was grandfathered from this new added requirement.

The below AT&T tariff of course shows the deposit is required on the party that transferred away locations. The security deposit against potential shortfall was required when there was projected shortfall on the non-transferred revenue commitment. This obviously confirms that revenue and time commitments do not transfer on a traffic only transfer and of course answers Judge Bassler's moot question anyway.

 **B. Deposit For Shortfall Charges** - The Company will require a deposit from a Customer that meets each of the elements specified in 1. through 3., following, to be held as a guarantee for the payment of any charge that may be incurred as a result of a failure to meet revenue or volume commitments or monitoring conditions (Shortfall Charge) under an AT&T Pricing Plan (a term plan, flex plan, or other discount plan with revenue or volume commitments offered under this Tariff, or a Contract Tariff under which WATS is provided). The amount of this deposit will not exceed the estimated Shortfall Charge, to be determined in accordance with the applicable tariff provisions under which such Shortfall Charges would be assessed, based on the total annualized charges or usage calculated as specified in the applicable category under 2., following. A deposit will not be required under this Section if the amount of the estimated Shortfall Charge is less than \$300,000. A deposit will be required when each of the three following requirements is met:

1. The Customer has subscribed to a Pricing Plan that includes a revenue or volume commitment based on charges or usage over a period of one year or longer.

When Judge Wigenton in 2014 asked AT&T counsel Guerra about this deposit issue on the traffic transfer Mr Guerra pulled a fast one on her Court and said THAT SECURITY Deposit had to do with the first security deposit between the Inga Companies and CCI which was resolved by the May 1995 Judge Politan Order. Obviously Judge Wigenton was asking about the traffic only transfer but Mr Guerra deflected the conversation because Mr Guerra understood the conclusive tariff evidence showed that revenue and time commitments do not transfer on a traffic only transfer.

Fast forward to 2016 in Judge Wigenton's Court when petitioners detailed the 2014 "security deposit against potential shortfall" deflection AT&T pulled in 2014. What did AT&T do it 2016?

AT&T's 3.21.16 brief to Judge Wigenton page

“Plaintiffs nevertheless base their contrary assumption on the fact that the Court was asking “about transferring obligations in reference to the CCI-PSE transfer.” Pls. Br. at 8. But Transmittal 9229 would have had prospective effect only, **and so would not have governed the CCI/PSE transfer at all.**”

AT&T simply scammed Judge Wigenton into believing that just because petitioners were grandfathered from having to post security deposits against potential shortfall that the tariff did not apply to petitioners, which of course is total nonsense. If the fundamental terms and conditions of the tariff did not apply to petitioners, then there would be nothing to preclude petitioners from ordering whatever type of transfer it wanted. So, AT&T’s own intentional fraud on Judge Wigenton even made no sense. Does anyone really believe that Mr Brown and Mr Guerra actually believe that the tariff did not apply to petitioners! Unbelievable the intentional fraud AT&T counsel got away with!

AT&T of course did confirm as Meade certified to Judge Politan that Tr9229 was AT&T’s new way to handle substantial traffic only transfers. Thus AT&T’s “CLOSE ENOUGH” to a plan transfer assertion under Tr8179 was done ---that controversy was over---and AT&T moved on using security deposits against potential shortfall with its prospective tariff change to 2.1.8.

AT&T’s only remaining defense was fraudulent use under 2.2.4 and the FCC denied it:

The FCC denied the sole defense of fraudulent use.

FCC 2003 Pg.10 para 13.

“Because AT&T did not act in accordance with the **“fraudulent use”** provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. **AT&T does not rely upon “any other provisions of its tariff” to justify its conduct.**”

The DC Circuit’s position on fraudulent use was that it would only be fraudulent use under 2.1.8 if a party refused to accept ANY OBLIGATIONS. Given the fact that as the DC Circuit Decision indicates and Judge Bassler also determined and the Judge Politan’s May 1995 non-vacated Decision shows that PSE did assume all the obligations within section 2.1.8 in January 1995. Thus, the sole controversy of fraudulent use was ruled against AT&T by the DC Circuit.

The DC Circuit Legal Director Martha Tomich stated that DC Circuit Court Decision was not a remand. If the DC Circuit Decision was a remand it would say it’s a remand. By definition that means there were no other open issues (i.e. controversies) WITHIN THE SCOPE OF THE ORIGINAL REFERAL that were left open to resolve.

The only controversy referred by Judge Politan was fraudulent as AT&T's Tr8179 attempt on 2.1.8 failed. Below we see AT&T confusing Judge Bassler into believing the DC Circuit Court Decision was a remand:

15 THE COURT: Let me just stop you there for a minute.

16 I think there's some loose language in one of your
17 briefs where -- I don't have the page number in front of me,
18 where you say the DC Circuit remands the case to the FCC. I
19 don't see any language of remand.

20 MR. GUERRA: Your Honor, you are correct, there's no
21 formal remand but our view is that that's the only sensible way
22 to interpret what the DC Circuit did because it knew there was
23 primary referral to the FCC whether the transfer at issue was
24 permitted under the tariff. The FCC said the tariff provision
25 doesn't apply. That was the first ruling. The DC Circuit says

IRA N. RUBENSTEIN, CSR, Official Court Reporter, Newark, N.J.

5

1 that's completely wrong but here's this issue that has to be
2 decided if this transfer is permissible.

3 THE COURT: You don't think the DC Court knows how to

4 use the word "remand?"

The FCC's task was simply to determine whether AT&T could use section 2.2.4 to prohibit a traffic only transfer. The FCC determined that AT&T used an illegal remedy when using 2.2.4 and thus denied 2.2.4. The fact that the FCC did not see that 2.1.8 allowed traffic only transfers had no effect on the FCC's determination that AT&T was not allowed to use the fraudulent use provision in the manner that it did. The controversy as to section 2.1.8 allowed a substantial traffic only transfer had been resolved with the FCC's denial of Tr8179 and replacement with Tr9229.

Mr Guerra created a controversy that had been resolved already with Tr8179 and the Tr9229. That was AT&T's solution to the 2.1.8 controversy. There was no need for the FCC to determine which obligations transfer under 2.1.8 as AT&T, Judge Politan and petitioners all agreed 2.1.8 allowed traffic only transfers.

Under the Administrative Procedures Act the FCC only interprets controversies. There is no controversy to decide in reference to 2.1.8. Those controversies as AT&T's counsel Mead and Carpenter stated before the referral was sent were already settled with Tr9229 replacing Tr8179.

The FCC's General Counsel Austin Schlick said in 2005 that it was the FCC's position that the DC Circuit Decision was NOT A REMAND and thus by definition the fraudulent use controversy has been determined and since it is not a remand that means there are no other open controversies.

READ EMAILS IN CHRONOLOGICAL ORDER FROM BOTTOM UP:

From: Al [<mailto:ajdmm@optonline.net>]
Sent: Friday, April 15, 2005 6:09 PM
To: Austin Schlick
Cc: John Ingle
Subject: Re: Mr. Schlick & Mr. Ingle

Thank you
 Al Inga
 The Inga Companies
 ----- Original Message -----

From: [Austin Schlick](#)
To: [Al](#)
Cc: [John Ingle](#)
Sent: Friday, April 15, 2005 6:05 PM
Subject: RE: Mr. Schlick & Mr. Ingle

Yes.

*** Non-Public: For Internal Use Only ***

-----Original Message-----
From: Al [<mailto:ajdmm@optonline.net>]
Sent: Friday, April 15, 2005 6:01 PM
To: Austin Schlick
Subject: Re: Mr. Schlick & Mr. Ingle

Mr Schlick

May I use the email below, as is, in a letter to Judge Bassler.

----- Original Message -----

From: [Austin Schlick](#)

To: [Al](#)

Cc: [John Ingle](#)

Sent: Friday, April 15, 2005 3:12 PM

Subject: RE: Mr. Schlick & Mr. Ingle

Any letter from the court to the FCC, or from a party in litigation to the FCC concerning the litigation, could be directed to me:

Austin C. Schlick
Acting General Counsel
Federal Communications Commission
Washington, D.C. 20554

*** Non-Public: For Internal Use Only ***

-----Original Message-----

From: Al [<mailto:ajdmm@optonline.net>]

Sent: Friday, April 15, 2005 2:22 PM

To: Austin Schlick; John Ingle

Subject: Mr. Schlick & Mr. Ingle

Gentleman

Is there some time point where the FCC will put in writing that it is not treating the DC Courts decision as a remand?

Mr Arleo was told by John Ingle of this FCC position, but Judge Bassler in the NJ District Court may want to see something in writing.

If the FCC will not declare in writing the FCC proceedings are over will the FCC respond to a letter from Judge Bassler?

If the FCC will answer the Judge to whom at the FCC can the Judge address his question to?

I hope you appreciate the situation that the Inga Companies are in. Generally, Judges are not apt to act on verbal stances.

I have not been able to retain Mr. Arleo as of yet and part is because he does not want to represent to the Judge the FCC's verbal position.

Please understand my predicament.

Al Inga

Inga Companies

ABOVE IS THE START OF THE EMAILS FROM FCC GENERAL COUNSEL.

The question that Judge Bassler asked was:

Case 2:95-cv-00908-WGB-MF Document 147 Filed 06/01/2006 Page 2 of 2

case closed.

IT IS FURTHER ORDERED that the Plaintiffs, no later than August 1, 2006, file an appropriate proceeding under Part I of the FCC's rules to initiate an administrative proceeding to resolve the issue of precisely which obligations should have been transferred under § 2.1.8 of Tariff No. 2 as well as any other issues left open by the D.C. Circuit's Opinion in AT&T Corp. v. Federal Communications Commission, 394 F.3d 933 (D.C. Cir. 2005).

/s/ WILLIAM G. BASSLER
WILLIAM G. BASSLER, U.S.S.D.J.

Under the Administrative Procedures Act the FCC only resolves controversies. The parties have always agreed that 2.1.8 allowed traffic only transfers and had in 1995 agreed that revenue and time commitments do not transfer on a traffic only transfer. The controversy of the size of the transfer was resolved when AT&T was denied retroactively modification to 2.1.8 when it filed Tr8179 and then replaced it with Tr9229 security deposits against potential shortfall. So no controversy exists as to the SIZE of the transfer. Judge Bassler understood 2.1.8 allowed traffic only transfers and Judge Bassler understood there was no longer a controversy due to the size of the transfer. Judge Bassler understood the fraudulent use decision went against AT&T. Judge Bassler's sole issue was did petitioners also have to transfer the shortfall and termination liability:

Page 23 -24

19 THE COURT: Why does the agency have the more expertise
20 on making the call as to whether the tariff phraseology, "all
21 obligations" includes shortfall in termination?

“Shortfall and termination” are the penalties that result from failing to meet the non-transferred plans revenue and time commitments. As the FCC 2007 Order indicates this referral does not expand the scope of the original 1995 referral---which was on the fraudulent use controversy. AT&T’s entire defense of fraudulent use had to take the position that revenue and time commitments did not transfer in order to even assert that defense. So obviously, there was no controversy between the parties as to the fact that revenue and time commitments must not transfer under 2.1.8. That’s why AT&T tried to retroactively change 2.1.8 via Tr8179!

If there was an issue regrading which obligations transfer it would have been referred to the FCC and then the FCC would have interpreted it. Then the DC Circuit would have reviewed it. The DC Circuit Decision is explicitly states that the obligation allocation issue was not reviewable because the FCC was not asked to interpret it. Of course, the very reason why Judge Politan did not need for the FCC to interpret which obligations transfer ---nor did he need to determine whether section 2.1.8 allowed substantial traffic only transfers was the ONLLY CONTROVERSY was section 2.2.4 fraudulent use.

See DC Circuit Decision:

- “The Communications Act **precludes us from addressing only those issues which the Commission has been afforded no opportunity to pass.**” 47 U.S.C. Section 405(a).” (DC Circuit Decision in Plaintiffs initial brief pg. 10 fn1.
- “How this enumeration affects the requirement that new customer assume “*all* obligations of the former Customer” (emphasis added) is **beyond the scope of our opinion.**” DC pg. 11 fn2
- “We also do not decide precisely which obligations should have been transferred in this case, as this question was **neither addressed by the Commission** nor adequately presented to us.” DC Circuit Page 11

Simple: 1) Judge Politan did not need to refer a controversy as to which obligations transfer as AT&T raised no defense in 1995 as per 2.1.8 that the parties did not transfer what it was supposed to transfer for traffic only transfers. **2)** Thus, the FCC was not asked to interpret which obligations transfer. **3)** Thus, the DC Circuit Court appropriately stated it can’t review obligation allocation because the FCC was not asked to interpret it and of course did not issue a remand on fraudulent use controversy. The DC Circuit simply decided that it would be fraudulent use under 2.1.8 if a customer refused to accept ANY OBLIGATIONS. That of course did not happen in the CCI to PSE traffic only transfer or the Inga Companies to PSE traffic only transfer.

As we now realize the Third Circuit ended up referring the fraudulent use controversy to the FCC but Judge Politan had already determined that the plans were immune from shortfall and termination liability so AT&T had no merit to raise its fraudulent use defense in the first place.

March 1996 Judge Politan Decision Page 16 para 1:

The Court finds **nothing** in the Tariff F.C.C. No. 2 which prevents fractionalization, and contemplates a like finding by the F.C.C. Clearly, therefore, plaintiffs have established a strong likelihood of success on the merits.

NOTHING IS NOTHING. Nothing having to do with the SIZE of the transfer under 2.1.8. Nothing having to do with whether 2.1.8 allows traffic only transfers. Nothing having to do with whether AT&T could use section 2.2.4 to prohibit a permissible 2.1.8 traffic only transfer. Nothing! Nothing! Nothing!

Judge Bassler referral was done in error as the only 1995 controversy of fraudulent use was referred to the FCC by the 3rd circuit. When by March 1996 Judge Politan determined AT&T's fraudulent use defense had no merit because the plans were all pre-June 17th 1994 grandfathered:

A) Judge Politan: "Commitments and shortfalls are little more than **illusory concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. The only "tangible" concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T's demand for fifteen million dollars' security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T.** March 1996 Politan Decision (page 19 para 1)

B) Judge Politan: "Suffice it to say that, with regard to **pre-June, 1994 plans,** methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T's own tariff." **May 1995** NJFDC Decision pg. 11

C) Judge Politan: "In answer to the court's questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T." **May 1995 NJFDC Decision pg. 24**

Note 2 of 3 quotes above are from the non-vacated May 1995 Judge Politan Decision.

The FCC Pricing Line Division issued the January 12th 2007 FCC Order which determined Judge Bassler's 2006 referral did not expand the scope of the original 1995 referral on fraudulent use.

The FCC Pricing Line Division January 2007 Order properly took the position that the Judge Bassler referral was a new controversy. It was a 2005 created controversy that AT&T created by intentionally scamming Judge Bassler with AT&T's misquote and cover-up of the ("all obligations language within 2.1.8) and incredibly asserting the DC Circuit Decision was a remand—when of course it was not. AT&T's original position was revenue and time commitments do not transfer on traffic only transfers and when asserting fraudulent use. AT&T since 2005 now asserts that revenue and time commitments must transfer on a traffic only transfer under 2.1.8.

The FCC Pricing Line Division referred petitioners to the FCC ethics staff. This of course is further confirmation that the Jan 2007 FCC Order determined AT&T created a bogus "all obligations" new controversy—which AT&T tried on the FCC.

AT&T counsel understood it was engaging in an intentional fraud that it could not possibly support with evidence—as AT&T has never required revenue and time commitments to transfer. The very reason AT&T tried to retroactively change section 2.1.8 via Tr8179 was AT&T understood there was NOTHING in 2.1.8 that prohibited substantial traffic only non-plan transfers.

AT&T Counsel asserted to Judge Politan as March 8th 1995 there were thousands of traffic only transfers among aggregators and **AT&T can't produce one** in which the plan commitments transfer:

“But there are literally - - my guess is hundreds, if not thousands, of transfers that have happened **among aggregators** and aggregations plans.” NJFDC Oral Argument pg. 53

4.2.A.1 Standards for Making Representations to the Court: Rule 11(b) provides that, “[b]y presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the **best of the person's knowledge**, information, and belief, formed **after an inquiry reasonable under the circumstances**” that the material presented is not filed for an improper purpose and has the **requisite degree of evidentiary** and legal support. This amendment “subject’s litigants to potential sanctions for **insisting upon a position after it is no longer tenable**.”

Obviously AT&T did not need to make an inquiry to its business people to ask which obligations go where. Mr Brown advised the Third Circuit in 1996 that it was self-evident under 2.1.8 that on a traffic only transfer the revenue and time commitments don’t transfer. Obviously AT&T counsel are “insisting upon a position after it is no longer tenable”. Mr Brown and Mr Guerra simply INTENTIONALLY scammed the NJFDC silly and **tried to cover it up** by misquoting the tariff:

Below are just a few from dozens of misquotes of the tariff by AT&T’s counsels in Judge Bassler’s Court and the FCC in 2007, prior to the tariff analysis being realized. The actual tariff language is “the new customers must assume all obligations of the **FORMER** customer at the time of the transfer.” **Former** is an adjective that modifies the noun. But AT&T thought the word **former** was much too long of a word to use so it felt it needed to misquote the tariff:

- 1) “Thus, the second sentence of § 2.1.8B did not limit the sweepingly broad requirement that a **transferee** accept "all obligations" of the **transferor**.”
- 2) the ‘new’ customer in the transfer, did not assume all the obligations’ of **the ‘old’** customer, CCI,”
- 3) “whether a proposed transfer of virtually all end-user WATS traffic, without a transfer of "all obligations" of the **transferor**, complies with § 2.1.8.”

4) “ARGUMENT I. SECTION 2.1.8 REQUIRES A **TRANSFeree** TO ACCEPT "ALL OBLIGATIONS" OF THE **TRANSFEROR** COMPANY, INCLUDING ANY OBLIGATION TO PAY SHORTFALL OR TERMINATION CHARGES.”

5) “whether a **transferee's** refusal to accept all of a **transferor's** obligations satisfies § 2.1.8.”

After the cover was blown AT&T incredibly stated to the FCC that it was just paraphrasing! This was no paraphrasing—it was an intentional attempt to cover-up the actual language of the tariff to pull off the intentional fraud. Imagine AT&T expected the FCC staff and Judge Wigenton to believe this---**without any evidence!!!** Most people paraphrase by making a long passage and making it shorter. Here AT&T needed to change ONE WORD: **Former** into 2 words: OLD PLAN and the TRANSFEROR.

PSE is only responsible for assuming all obligations of the FORMER Customer. If the PLAN is not transferring then the transferor is not a FORMER AT&T customer as it remains an AT&T customer and as per CSTPII definitions must maintain its CSTPII/RVPP revenue and time commitments.

If section 2.1.8 really mandated that for traffic only non-plan transfers the revenue and time commitments must transfer, then AT&T would have been able to show the Court and FCC thousands of examples. But of course, no evidence exists. It was obviously an intentional AT&T fraud.

AT&T has clearly violated its Rule 11B. It does not have the **requisite degree of evidentiary and it continues to insist upon a position after it is no longer tenable.**

Al Inga
Group Discounts, Inc.

From: Town News [mailto:townnews@optonline.net]

Sent: Friday, March 10, 2017 8:42 AM

To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.Orielly@fcc.gov' <Mike.Orielly@fcc.gov>; 'Nancy_Dunn@cad.uscourts.gov' <Nancy_Dunn@cad.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov'

<Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.ingle@fcc.gov' <john.ingle@fcc.gov>; 'martha_tomich@cadc.uscourts.gov' <martha_tomich@cadc.uscourts.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'Frank Arleo' <Frank.Arleo@arleonohue.com>; 'Nicholas.Degani@fcc.gov' <Nicholas.Degani@fcc.gov>; 'nick.degani@fcc.gov' <nick.degani@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'Amy.Bender@fcc.gov' <Amy.Bender@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deanne.Erwin@fcc.gov' <Deanne.Erwin@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'john.ingle@fcc.gov' <john.ingle@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'laynede@dor.state.fl.us' <laynede@dor.state.fl.us>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'MeredithAttwell.Baker@fcc.gov' <MeredithAttwell.Baker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>
Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>
Subject: RE: Richard Brown intentional Fraud on the NJFDC....

Mr Brown

Please confirm receipt

AT&T creates new controversy in 2005 that 2.1.8 allows traffic only transfers but insists it was its position within 10 days of the 1995 traffic only transfers that petitioners **refused to transfer the plan commitments** and this was the reason why AT&T denied the transfer. The following Judge Bassler Oral Argument section has no mention of AT&T 1995 defense of fraudulent use mandating that the plans revenue and time commitments must transfer.

It also does not assert a Tr8179 controversy that due to the size of the traffic only transfer AT&T believed it had the right to force a plan transfer to force the revenue and time commitments and their associated liabilities for shortfall and termination liability.

AT&T's bogus assertion was simply 2.1.8 for traffic only transfers mandates the revenue and time commitments must transfer and that is why AT&T denied the transfer:

The following Oral Argument in 2006 in Judge Bassler's Court shows Judge Bassler understanding the only two obligations listed in 2.1.8 were transferred (the bad debt and the minimum payment period) but Judge Bassler erroneously believed the DC Circuit Decision was a REMAND as to whether the shortfall and termination liability should also transfer:

Page 20 :

AT&T counsel Guerra Arguing plan obligations transferring is the controversy:

- 15 We have been litigating 11 years because they say they
- 16 didn't have to transfer that. I, frankly, don't understand.
- 17 They say that's a question of fact. It's in every one of their
- 18 briefs, including briefs they submitted here. They've done the
- 19 things. They have transferred. That's why they're fighting.
- 20 **They have no intention of transferring them.**

PAGE 22 AT&T Counsel Guerra regarding discrimination claims:

8 MR. GUERRA: It's a possibility. But I think getting
 9 the answer from the FCC is first.
 10 Just as the FCC said, you don't get to this question
 11 until you conclude that 2.1.8. **Required all these obligations**
 12 **to transfer.** Because if it didn't, then AT&T didn't
 13 discriminate with respect to the other parties **allegedly** allowed
 14 to make transfers without switching the obligations over.
 15 THE COURT: If you waived it to the other ones,
 16 assisted on it here --
 17 MR. GUERRA: But already resolved the refusal here was
 18 unlawful based on the language. Tariff, you wouldn't need to
 19 get into discrimination.

Page 23 -24

19 THE COURT: Why does the agency have the more expertise
 20 on making the call as to whether the tariff phraseology, **"all**
 21 **obligations" includes shortfall in termination?**
 22 MR. GUERRA: Well, your Honor, first of all the FCC
 23 interprets tariffs all the time. It has an understanding of
 24 what's common practice. It has an understanding that no Court
 25 would have. The Third Circuit has always said **interpreting 2.18**

1 is a job. FCC, they identify generality, important social
 2 policies.

Mr Guerra simply flat out lies to Judge Bassler that the 1995 controversy was that AT&T denied the January 1995 transfers within 15 days because it was insisting that on a **traffic only transfer** the revenue and time commitments must transfer.

Notice how AT&T counsel Mr Guerra says there are "the other parties **allegedly** allowed to make transfers without switching the obligations over."

Mr Brown before Judge Wigenton used the same "**alleged** other transfers" line in her Court.

AT&T Counsel Mr Whitmer advised Judge Politan in 1995 that there had already as of 3.8.95 been **thousands** of traffic only transfer in which the revenue and time commitments DID NOT TRANSFER. Judge Politan wanted to know from AT&T counsel Fred Whitmer what the largest traffic only transfers were and what the default ratios were in AT&T not being able to collect shortfall and termination charges. So her asked AT&T counsel how many traffic only transfers were done and the sizes of them.

AT&T Counsel asserted to Judge Politan as March 8th 1995 there were thousands of traffic only transfers among aggregators and AT&T can't produce one in which the plan commitments transfer:

“But there are literally - - my guess is hundreds, if not thousands, of transfers that have happened among aggregators and aggregations plans.” NJFDC Oral Argument pg. 53

AT&T has never provided any evidence:

“To the extent however that AT&T's demand for fifteen million dollars' security is premised on the danger of shortfalls, the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (page 19 para 1)

NJFDC Judge Politan stated in his March 5th 1996 Order at 18-20 that the parties could:

“revisit the issue of security at any time in the future upon the filing of appropriate papers supported by **credible documentary or testimonial evidence** (emphasis added).”

The FCC's DC Circuit brief cited Judge Politan's Decision that also noted AT&T provided **no evidence** and AT&T misled this Court that it has “responded” to the FCC as to why it has zero evidence:

“Again, they have also made these contentions to the FCC (see Brown Cert., Ex. O at 73-76 (discussing alleged ambiguity) and 174-178 (**raising alleged other transfers of transfers of service**), and **AT&T has responded to those arguments in that proceeding**.” AT&T Pg. 29

AT&T hasn't “responded to “alleged other transfers of service” in that proceeding”. AT&T's own executive's contradicting its own counsel assertion that revenue and time commitments must transfer on a traffic only transfer were FCC filed by Tips Inc., on June 2014 and AT&T conceded it stopped responding May 2008!”

Regarding AT&T having zero evidence, the FCC pg. 13 fn. 87 stated:

“Assuming that further inquiry is appropriate, efficiency favors their resolution in the district court where the evidentiary record already has been developed.”

So Richard the FCC is saying we should go back to Judge Wigenton and let her see if AT&T really does have evidence of traffic only transfers in which the revenue and time commitment transfer. Additionally, petitioners need AT&T to show Judge Wigenton EVIDENCE that AT&T within 15 days of the CCI to PSE and Inga to PSE traffic only transfers stated it denied those transfers because 2.1.8 requires revenue and time commitments to transfer on a traffic only transfer and that petitioners and PSE were refusing to accept the revenue and time commitments.

Show the FCC 1 single statement before we go back to NJFDC.

Richard you remember this scam AT&T pulled on Judge Wigenton:

AT&T's 3.21.16 brief page 33:

“Counsel's point was that PSE had not agreed to accept “all” of the obligations, not that it was assuming “zero” obligations. And this Court understood AT&T's position: THE COURT: So your position, then, Mr. Guerra, is had there been some understanding that all the obligations would transfer as well, then everything would have obviously proceeded and the contracts would have been fine and AT&T would have been on board. It was the notation of **“traffic only”** which was sort of the impediment?

MR. GUERRA: Yes. And, again, this is the understanding that the DC Circuit had, the FCC had. Id. at 18 (emphasis added). Moreover, both the **D.C. Circuit and FCC** did understand that, under the proposed transaction, PSE would not assume all of CCI's obligations.”

The notations on the forms were “Traffic Only” and noted all locations transferred except the ones indicated on the form. The forms do not say transfer TRAFFIC ONLY NO OBLIGATIONS. The forms do not indicate any mandate upon AT&T to alter in any way what the 2.1.8 required as far as obligation allocation.

Show the FCC and Judge Wigenton one single statement within 15 days of the traffic only transfers in 1995 AT&T was denying the traffic only transfer because section 2.1.8 required on a traffic only transfer to transfer revenue and time commitments. There are none. AT&T's position was exactly the opposite arguing that because section 2.1.8 mandated that the revenue and time commitments must stay with the non-transferred plan AT&T was denying the traffic only transfers based upon section 2.2.4 fraudulent use. AT&T simply lied to Judge Wigenton. AT&T understood section 2.1.8 allowed both traffic only and plan transfers. Petitioners were simply advising AT&T that this was a traffic only transfer not a plan transfer and then the explanation continued with stating the accounts to remain. There is no mention of obligation allocation.

Richard--- Where do you see the FCC believing that the Traffic Only sentence meant NO OBLIGATIONS were being transferred:

Judge Politan and the FCC understood the Traffic Only sentence.

Accordingly, CCI and PSE jointly executed and submitted to AT&T nine TSA forms for each of the nine plans.^[1] At the bottom of each TSA, in handwriting, these parties directed AT&T to move the **“traffic only”** on each plan to PSE.^[2] The January 13 letter, under which these nine TSAs were forwarded, directs AT&T to **“move the locations associated with these plans [but] not ... in any way to discontinue the plans.”**^[3] In this way, CCI and PSE attempted to move to PSE the end-user traffic associated with each of the nine CSI CSTP II/RVPP plans, **but not to move the actual plans themselves.**

DC Circuit Court Reference to Traffic Only Statement:

AT&T, however, argues persuasively that the FCC misinterpreted its comment. Immediately following the alleged concession, AT&T’s submission noted that:

[Section 2.1.8], by its terms, allows a transfer of CCI’s service to PSE only if PSE agreed to assume all obligations under those **plans**. *Yet CCI explicitly amended the transfer of services form to read “Traffic Only.”*

By expressly declaring that it did not intend to effectuate a transfer of all obligations under the **plans** to PSE . . . *the proposed transfer, on its face, violated the terms of Section 2.1.8.*

What AT&T asserted to the FCC was a misstatement of facts that the traffic only transfer was a **plan** transfer. A plan transfer did require the revenue and time commitments to transfer under 2.1.8 and AT&T was asserting that petitioners UNDER A **PLAN** TRANSFER would be violating section 2.1.8. if it did not transfer the revenue and time commitments.

AT&T did not say that petitioners under a **traffic only** transfer would be violating 2.1.8. AT&T understood that only on a **plan** transfer as in the INGA TO CCI **plan** transfer do the revenue and time commitments transfer. AT&T was simply misstating the facts of the transfer to the FCC in 2003---that it was a plan transfer and not a traffic only transfer.

The key here is not what AT&T was stating to either the FCC in 2003. The key is what evidence does AT&T have to show Judge Wigenton that within 15 days of the traffic only transfers that AT&T asserted anything close to a statement such as: Section 2.1.8 requires traffic only transfers to transfer the revenue and time commitments.

There are absolutely no AT&T statements in the record made by AT&T within 15 days of the required written denial that AT&T was even confused by the Traffic Only sentence. AT&T

^[1] *First District Court Opinion* at 10; see Exhibit H to Petition.

^[2] *See First District Court Opinion* at 10; Exhibit H to Petition.

^[3] *See Exhibit H to Petition.*

understood the traffic only sentence simply was a traffic only order as opposed to a plan transfer order. The FCC understood this also.

The real key is what Judge Politan understood in 1995.

AT&T's sole defense and thus the controversy in 1995 was whether section 2.2.4 fraudulent use could prohibit a permissible 2.1.8 traffic only transfer. AT&T was asserting that revenue and time commitments DO NOT Transfer under section 2.1.8 on a traffic only transfer:

See NJFDC Judge Politan March 1996 page 17 fn 7

“Indeed, **AT&T's own counsel** focused the issue by indicating that the tariffed obligations “*involved herein*” are all **tariffed obligations**, for which **“CCI, not PSE”** would be obligated.

--During the 11.28.95 hearing AT&T counsel kept asserting its fraudulent use defense and CCI's Mr Shipp kept agreeing that as per section 2.1.8 plan commitments don't transfer. It led to this comment:

AT&T's Whitmer: And one of the obligations of the customer, Winback & Conserve or CCI, that did not go to PSE in the attempted transfer was the obligations for shortfall and termination, correct?

Mr Shipp: That's correct. And we so **identified that on the transfer of service document.**

The Court: **I know all these facts, Mr Whitmer. I really do. I swear to God.**

Mr Whitmer: I have no further questions.

Mr Brown petitioners again will remind you of your obligations to the Court:

4.2.A.1 Standards for Making Representations to the Court: Rule 11(b) provides that,”[b]y presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the **best of the person's knowledge**, information, and belief, formed **after an inquiry reasonable under the circumstances**” that the material presented is not filed for an improper purpose and has the **requisite degree of evidentiary** and legal support. This amendment “subject’s litigants to potential sanctions for **insisting upon a position after it is no longer tenable.**

Have you made “inquiry reasonable under the circumstances” and requisite degree of evidentiary and legal support? **You are insisting upon a position after it is no longer tenable.**

You are flat out engaged in an intentional fraud on Judge Bassler and Judge Wigenton.

You tried to scam the FCC too. The FCC's 2007 Order determined the new controversy created in 2005 on which obligations transfer under 2.1.8 did not expand the scope of the original fraudulent use controversy of 1995.

Petitioners want Judge Wigenton to see AT&T will refuse to provide the required **evidence** that it claimed to Judge Wigenton that it addressed at the FCC in that proceeding.

Please comment to all FCC staff.

Al Inga
Group Discounts, Inc.

From: Town News [<mailto:townnews@optonline.net>]

Sent: Thursday, March 09, 2017 4:13 PM

To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.O'RIelly@fcc.gov' <Mike.O'RIelly@fcc.gov>; 'Nancy_Dunn@cadc.uscourts.gov' <Nancy_Dunn@cadc.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'martha_tomich@cadc.uscourts.gov' <martha_tomich@cadc.uscourts.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'Frank.Arleo' <Frank.Arleo@arleonohue.com>; 'Nicholas.Degani@fcc.gov' <Nicholas.Degani@fcc.gov>; 'nick.degani@fcc.gov' <nick.degani@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'Amy.Bender@fcc.gov' <Amy.Bender@fcc.gov>
Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>
Subject: RE: Richard Brown intentional Fraud on the NJFDC....

Richard

Please confirm receipt.

I will upload these emails after I give AT&T the opportunity to respond to everyone.

AT&T counsel David Carpenter advised the DC Circuit Court Judge Ginsburg that all petitioners had to do was submit the TSA form to satisfy the tariff. Petitioners did use the form issued by AT&T.

DC Circuit Oral Argument page 13:

JUDGE GINSBURG: Is the transfer form part of the filed tariff?

MR. CARPENTER: No, the transfer form implements the filed tariff.

JUDGE GINSBURG: Okay, so it's not really authoritative as to whether it's, what the meaning of the tariff is or whether it's even consistent with the tariff.

MR. CARPENTER: No, but the transfer form happens here to say exactly what the tariff says, and the only way you can satisfy the tariff is either use our form or submit in writing something that says exactly what our form says.

Please point out to the FCC staff where in the submitted AT&T TSA forms that it stated anything having to do with requiring that certain obligations do or don't get transferred. The non-disputed fact is there was no special requirement being requested by PSE or petitioners. Mr. Brown ---under your current fraud on Judge Wigenton that you and Joseph Guerra started in 2005---- AT&T's position is that petitioners refused in 1995 to transfer the revenue and time commitment on the traffic only transfer. Please review the cover letter from PSE and the 9 TSA forms. Please indicate where there was a stipulation made to ALTER whatever 2.1.8 required for obligation allocation.

AT&T had 15 days to raise a defense as per 2.1.8. Richard even your fraud has holes. You need another fraud Richard. Your intentional fraud that petitioners refused to transfer and accept revenue commitments has zero evidence. Of course, Richard if 2.1.8 mandated that revenue and time commitments transferred on traffic only transfers AT&T would have thousands of samples per your co-counsel Mr Whitmer.

You tried the fraud on the FCC and FCC case manager Deena Shetler wasn't about to allow you to get away with the fraud and issued the January 12th 2007 Order which you manipulated and presented to Judge Wigenton. Then when petitioners requested that the FCC reissue the Jan12th 2007 Order to simply clarify it for Judge Wigenton you OPPOSED clarification.

Petitioners offer still stands---Show 1 single traffic only transfer under 2.1.8 in which the revenue and time commitments transferred and we will drop the case. Your co-counsel Mr Whitmer said you have thousands of them.

Group Discounts, Inc.

From: Town News [<mailto:townnews@optonline.net>]

Sent: Thursday, March 09, 2017 12:49 PM

To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.Orielly@fcc.gov' <Mike.Orielly@fcc.gov>; 'Nancy_Dunn@cadc.uscourts.gov' <Nancy_Dunn@cadc.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'lcoven@optonline.net' <lcoven@optonline.net>; 'martha_tomich@cadc.uscourts.gov' <martha_tomich@cadc.uscourts.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>

Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>

Subject: RE: Mr Brown--Rule 11b subjects litigants to sanctions for insisting upon a position after it is no longer tenable.

FCC Staff & Richard Brown

What the Commission needs to focus on is the fact that there was no controversy between the parties once Tr8179 was resolved as to which obligations transferred under 2.1.8. The May 1995

Decision explicitly states that PSE was going to be responsible for the bad debt on all the accounts transferred to it. AT&T agreed that it could not force a plan to transfer to force the revenue and time commitments to transfer.

You also must focus on the fact that PETITIONERS NOR PSE indicated within the TSA's and Cover letter that went with the TSA's that there **NEEDED TO BE ANY MODIFICATION OF WHICH OBLIGATIONS TRANSFER!!!**

PLEASE REVIEW FCC 2003 Order page 3:

“Accordingly, CCI and PSE jointly executed and submitted to AT&T nine TSA forms for each of the nine plans.^[1] At the bottom of each TSA, in handwriting, these parties directed AT&T to move the **“traffic only”** on each plan to PSE.^[2] The January 13 letter, under which these nine TSAs were forwarded, directs AT&T to **“move the locations associated with these plans [but] not ... in any way to discontinue the plans.”**^[3] In this way, CCI and PSE attempted to move to PSE the end-user traffic associated with each of the nine CSI CSTP II/RVPP plans, but **not to move the actual plans themselves.”**

In other words... Petitioners simply submitted the forms and AT&T as per section 2.1.8 (c) within 15 days must process the transfer as per **WHATEVER 2.1.8 mandated as far as obligation allocation.**

Section 2.1.8 handles traffic only and plan transfers. As the FCC 2003 Order indicated petitioners simply advised AT&T that it wanted a Traffic Only transfer and explicitly indicated on each TSA the end-user location traffic that was to be left on the non-transferred plan.

Do you see any comments from the FCC that the petitioners were mandating that AT&T traffic transfer ONLY if the obligations are to be allocated in a manner other than what 2.1.8 required? NO!

It was AT&T's responsibility to simply process that ORDER **under whatever obligation allocation it believed was necessary to adhere to the terms and conditions of section 2.1.8.** The onus is on AT&T to process the order in accordance with the terms and conditions---not petitioners!!!!

It was AT&T that FIRST SPOKE UP and stated it would not process the order due to **FRAUDULENT USE** 2.2.4. AT&T by asserting fraudulent use was -----as the evidence shows - ---was advising exactly what it believed 2.1.8 mandated in obligation allocation. It was AT&T that took the position that it would not process the order because the revenue and time commitments do not transfer.

^[1] First District Court Opinion at 10; see Exhibit H to Petition.

^[2] See First District Court Opinion at 10; Exhibit H to Petition.

^[3] See Exhibit H to Petition.

It was AT&T that ran to the FCC on February 16th 1995 and tried to change 2.1.8 and failed. When AT&T accepted the fact that the FCC denied Tr8179 the 2.1.8 CONTROVERSY WAS DONE!!! In fact the 2.1.8 controversy was actually done 15 days after submission. AT&T filed Tr 8179 on February 16th 1995. AT&T only had 15 days to question 2.1.8. The traffic was transferred Jan 13th from CCI to PSE ----that was held up due to security deposits. However, the Inga to PSE traffic only transfer of Jan 30th 1995 was not denied due to security deposits and that transfer was not denied at all. February 16th 1995 is more than 15 days after Jan 30th 1995. Tr 8179 failed anyway so the controversy as per 2.1.8 was over within 15 days --if there even was a controversy. AT&T raised the controversy not petitioners!!! Petitioners simply asked for a traffic only transfer!!! That is it!!

After the DC Circuit AT&T asserted to Judge Bassler that 2.1.8 in 1995 did allow traffic only transfers but petitioners were not transferring the revenue and time commitments on its traffic only transfer. Where in the 9 TSA's and cover letter does it mandate AT&T to ALTER WHAT 2.1.8 requires? It doesn't!!!

If there were truly an animal that existed that allowed a traffic only transfer where it required, the revenue and time commitments to also transfer then WHY DIDN'T AT&T SIMPLY PROCESS THE ORDER in January 1995?

The very question of which obligations transfer is a MOOT Question. The answer is simple: The petitioners submitted the paperwork and explicitly stated it was doing a **proper** traffic only transfer. If AT&T BELIEVED in 1995 that traffic only transfers were permissible as Mr Whitmer indicated AT&T had done THOUNADS of Them and the revenue and time commitments did not transfer.

However, if AT&T believed that due to the SIZE of the traffic only transfer that revenue and time commitments must transfer w/o the plan then why didn't AT&T simply do that!!! Look the Bottom-line is petitioners asked for a traffic only transfer and AT&T on page 9 of its brief to the DC Circuit that 2.1.8 addresses transfers of traffic w/o the revenue and time commitments. We all know AT&T counsel is engaged in a fraud on obligation allocation----but the point here is that EVEN UNDER AT&T's FRAUD the issue is MOOT as AT&T should have simply processed the order within 15 days and transferred the revenue and time commitment.

AT&T is responsible for process the submission in accordance with the terms and conditions of section 2.1.8. The proper paperwork was submitted. It is AT&T's responsibility to adhere to the tariff. Given the fact that AT&T is claiming 2.1.8 allows traffic only transfers---there can't be any controversy as to obligation allocation as the proper paperwork was submitted!

All an AT&T customer can do is submit the proper paperwork! There is no controversy as per 2.1.8. between the parties. The FCC can only address controversies under the administrative procedures act. AT&T never claimed to Judge Politan that petitioners were requesting an order that would alter the normal obligation allocation of 2.1.8.

When AT&T filed Tr8179 there were MANY AT&T customers that were involved and all AT&T customers agreed with AT&T that 2.1.8 did not require revenue and time commitments to transfer on a traffic only transfer---BUT EVEN UNDER current AT&T counsel fraud ---there

was nothing to stop AT&T from transferring the revenue and time commitments IF that is what it believed was necessary.

You can't penalize an AT&T customer for ordering a traffic only transfer and not have it processed within 15 days. Given the undeniable fact that the proper paperwork was submitted that is ALL that can be required by a customer. The onus is on AT&T---so even under AT&T's fraud the 2.1.8 Judge Bassler referral is moot.

AT&T raised the obligation allocation issue not petitioners.....

Judge Politan's Confirms AT&T sole defense was fraudulent use:

On January 13, 1995, PSE and CCI jointly executed and submitted written orders to AT&T to transfer the 800 traffic under the plans CCI had obtained from the Inga companies to the credit of PSE. Only the traffic was to be transferred, not the plans themselves. In this way, CCI would maintain control over the plans while at the same time benefiting from the much larger discounts enjoyed by PSE under KT-516. AT&T refused to accept this second transfer on the ground that CCI was not the customer of record on the plans at issue, and thus could not transfer the traffic under those plans to PSE. AT&T was further troubled by the fact that if only the traffic on the plans and not the plans themselves were transferred to PSE, the liability for shortfall and termination charges attendant thereto would then be vested in CCI: an empty shell in AT&T's view." (1995 Decision pg. 10 para 2

- (A) Judge Politan March 1996 pg.17 fn. 7: "Indeed, AT&T's own counsel focused the issue by indicating that the tariffed obligations "involved herein" are all tariffed obligations, for which "CCI, not PSE" would be obligated.

FCC 2003 Pg.10 para 13.

"Because AT&T did not act in accordance with the "fraudulent use" provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. AT&T does not rely upon "any other provisions of its tariff" to justify its conduct."

Once the Tr8179 was dropped by AT&T and it was replaced with TR9229 there was never a controversy as per 2.1.8 only 2.2.4.

Petitioners also need for the FCC to understand AT&T has already conceded that the plans were pre June 17th 1994 at the time of the Jan 1995 traffic only transfers:

Please review the following dates:

Finally, we refuse the parties' request that we declare whether "pre-June 17, 1994 CSTP II plans, as are involved here, may never have shortfall charges imposed, as long as the plans are restructured prior to each one-year anniversary." See Joint Motion for Expedited Consideration at 2; Opposition at 14-15; Reply at 25. Declaratory relief on this issue – which also was not referred to us by the district court – is inappropriate because whether CCI's plans were pre- or post-June 17, 1994 plans **is a disputed fact**.

AT&T counsel Charles Fash dated July 3, 1996 which is under the FCC's October 1995 Order period. Charles Fash confirms the objections involving Shortfall infliction and illegal billing controversy:

You claim that AT&T, by placing tariffed shortfall charges on bills sent to CCI's end-users, was somehow stepping outside the established forum for resolution of the collection dispute (supposedly, the pending lawsuit between the parties). In fact, however, this is a new dispute that has nothing to do with the pending suit. Indeed, the relevant period for calculation of the of the shortfall charges in issue did not expire until **March 31, 1996** and the charges were then billed on the **June 1, 1996 bills**. **AT&T's claim for payment of these charges obviously could not have been the subject of litigation until both of these events had occurred.**

The controversy as per the PENALTY INFLICTION is how many post June 17th 1994 restructures does an AT&T customer have that is within a 3 years CSTPII/RVPP contract. AT&T's position in 1996 was that AT&T was not going to allow a second restructure even though petitioners were within the 3 year contract

The critical part that AT&T concedes ----and thus is NOT A DISPUTED FACT -----that as of the January 1995 the plans had not yet been restructured even 1 time after June 17th 1994 as the fiscal year was April 1995 thru March 31st 1996.

It is NOT a disputed fact that AT&T had as of Jan 1995, TRAFFIC ONLY TRANSFER AT&T HAD NO MERIT IN SUSPECTING FRAUDULENT USE AS THE PLANS---- EVEN UNDER AT&T'S SELF SERVING INTERPRETATION OF THE JUNE 17th EXEMPTION DURATION---were immune from charges. Yes, it is not relevant now that the DC Circuit decided the Fraudulent Use against AT&T. However, if the FCC in 2003 understood the plans were fiscal year plans and the penalty did not hit until June 1996---so of course the plans were immune --even without the FASH letter.

Al Inga President
Group Discounts, Inc.

From: Town News]

Sent: Wednesday, March 08, 2017 4:19 PM

To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.Orielly@fcc.gov' <Mike.Orielly@fcc.gov>; 'Nancy.Dunn@cadc.uscourts.gov' <Nancy.Dunn@cadc.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.ingle@fcc.gov' <john.ingle@fcc.gov>; 'lcoven@optonline.net' <lcoven@optonline.net>; 'martha_tomich@cadc.uscourts.gov' <martha_tomich@cadc.uscourts.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>

Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>

Subject: RE: Mr Brown--Rule 11b subjects litigants to sanctions for insisting upon a position after it is no longer tenable.

May 1995 Non Vacated Politan Decsion:

Tr 8179 was to resolve the controversy of whether AT&T had the right to force a customer that did a substantial traffic only transfer to mandate that it must do a **plan** transfer instead, so as to force the plan commitments to transfer.

The controversy ended when AT&T withdrew Tr8179 and determined it could not force a plan transfer under 2.1.8. Note the only request AT&T made was to force a PLAN TRANSFER. It did not make a request under Tr8179 to force a COMMITMENT TRANSFER because that animal never existed. AT&T created the new controversy in Judge Bassler's Court that 2.1.8 ALLOWED traffic only transfers without the plan but the PLAN COMMITMENTS must transfer—as if that was even an option.


When AT&T withdrew Tr8179 based upon the FCC's feedback and AT&T's Counsel Meade and Carpenter both advised Judge Politan that this controversy of whether AT&T could force a plan transfer on a substantial traffic only transfer under 2.1.8 was NO LONGER A CONTROVERSY as it accepted it could not and then came up with tr9229 to replace Tr8179.

The Bottom-line is the FCC at this point can NOT address a NON CONTROVERSY under 2.1.8. There is no controversy under 2.1.8 for the FCC to determine. There is no longer a controversy under fraudulent use as the DC Circuit determined that it would only constitute fraudulent use if there weren't any obligations transferred.

Furthermore this May 1995 non vacated Order clearly states that the plans were pre June 17th 1994 immune from shortfall and thus there was NO MERIT to suspect fraudulent use in the first place.

See Page 16 screenshot ---

... this issue will clear a path for the parties to proceed in their business relationships with each other, and lend predictability to their actions. The Court is also persuaded by the fact that this very issue is presently pending determination by the FCC. As such, the



"While the Court defers to the FCC's primary jurisdiction on the second transfer, the Court notes that AT&T has raised both transfers in its Tariff Transmittal 8179 to the FCC. This obvious attempt to create primary jurisdiction in the FCC on both transfers fails, however, to the extent that the first transfer and its adjudication are well within the ken of this Court and its jurisdiction as conferred by section 406 of the Act. While it may well be that AT&T is unhappy with its existing tariffs, that displeasure is not at issue in this case. In regard to the first transfer, as will be shown, the Court is asked to construe the clear and unambiguous language...

From: Town News [mailto:townnews@optonline.net]

Sent: Wednesday, March 08, 2017 12:10 PM

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Subject: RE: Mr Brown--Rule 11b subjects litigants to sanctions for insisting upon a position after it is no longer tenable.

Richard

Thank you for confirming receipt.

AL Inga
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From: Brown, Richard H. [<mailto:rbrown@daypitney.com>]
Sent: Wednesday, March 08, 2017 11:51 AM
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Subject: RE: Mr Brown--Rule 11b subjects litigants to sanctions for insisting upon a position after it is no longer tenable.

Received

From: Town News [<mailto:townnews@optonline.net>]
Sent: Wednesday, March 08, 2017 9:36 AM
To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.O'Rielly@fcc.gov' <Mike.O'Rielly@fcc.gov>; 'Nancy_Dunn@cad.uscourts.gov' <Nancy_Dunn@cad.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'lcoven@optonline.net' <lcoven@optonline.net>; 'martha_tomich@cad.uscourts.gov' <martha_tomich@cad.uscourts.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>
Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>
Subject: RE: Mr Brown--Rule 11b subjects litigants to sanctions for insisting upon a position after it is no longer tenable.

Mr. Brown

Please reply all and confirm receipt. Please review and comment if you like. Petitioners will wait for AT&T's comments and then upload the emails to the FCC server.

AT&T counsel Whitmer detailed PSE does not need to assume plaintiff's obligations when AT&T was asserting its sole defense of "Fraudulent Use" on 3/21/1995 cross examination of Mr. Inga in Judge Politan's Court:

Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **"lead account"** ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn't that correct?**

Inga: Yes

As you can see above there is NO CONTROVERSY between the parties as to which obligations are transferred on a traffic only transfer. If the home or lead account was not transferred it remains a traffic only transfer not a plan transfer. In tariff terms Home or lead account number is referred to as the MAIN BILLED TELEPHONE NUMBER.

AT&T then gets the March 1996 injunction issued against it by Judge Politan because Judge Politan determined AT&T's sole defense of fraudulent Use had no merit because the plans were all pre-June 17th 1994 ordered. AT&T appeals that decision based on primary jurisdiction claiming the FCC needs to determine the case. At this point, AT&T has already violated the October 1995 FCC Order mandating that it must meet the substantial cause test. Such as filing would have provided AT&T the FCC interpretation it claimed it was being denied. So, the case gets appealed to the Third Circuit and AT&T counsel Richard Brown on 4.25.96 addresses the Third Circuit.

Mr Brown understood that 2.1.8 allowed traffic only transfers and that the only two obligations that were listed within 2.1.8 were properly transferred. So, what Mr Brown decided to do was simply lie regarding the FACTS of the transfer. All end-user locations were **not** transferred as petitioners understood that if the main billed telephone number aka lead or home location was not transferred the plan and its revenue and time commitments must remain with the non-

transferred plan. Mr Brown mischaracterized CCI-PSE transfer as a plan transfer then asserted it was self-evident for traffic only transfers that the shortfall and termination obligations don't transfer:

Richard Brown on 4.25.96 addresses the Third Circuit.

“CCI Notes that a transfer of service can apply either to individual end user locations or to entire plans. See CCI Br. At 31-32 & n13. CCI then, incongruously, seeks to defend the District Court by citing “record evidence” that addressed transfers individual end user locations (not entire plan liabilities), and showed that the only “obligation” transferred to the “new customer” in that event is the unpaid liability associated with the individual end user location that is transferred. But that is self-evident under the tariff. By contrast, when all the plan’s traffic and locations are being transferred to a new customer and the “plan” would then exist only as an empty shell, then the “new customer” would not be assuming “all” the associated “obligations” unless it assumed the “existing customer’s” shortfall and termination commitments.”

Mr Brown clearly understood how 2.1.8 worked and clearly understood there was “record evidence” how the terms and conditions of 2.1.8 played out. This wasn’t so called “alleged other transfers” that AT&T bogusly asserted it addressed at the FCC as Mr. Brown intentionally scammed Judge Wigenton.

Despite Mr Brown’s co-counsel Mr Whitmer detailing that because the home/lead account did not transfer the revenue and time commitments do not transfer---Mr Brown simply lied to the Third Circuit and said ALL the accounts transferred and it was an EMPTY SHELL. All the accounts did not transfer and it was not an empty shell. AT&T’s account executive Joseph Fitzpatrick advised petitioners what it needed to do to maintain the plan and its revenue and time commitments and this is what was done.

The following is AT&T’s comments to the FCC in 2003 in which it acknowledged the two obligations within 2.1.8 were transferred but AT&T also wanted transferred the revenue and time commitments and their associated charges for shortfall and termination charges for failure to meet those plan obligations. AT&T simply misstates that it is a PLAN Transfer ---not a traffic only transfer:

AT&T FCC 2003 Reply J. Appendix 533:

“Petitioners were precluded under the governing tariff from transferring their CSTP II plans to PSE unless PSE agreed to assume all of the Petitioner's obligations under those same plans, *including tariffed shortfall and termination charges*.”

No emphasis added on italics. AT&T understood the only two obligations listed in 2.1.8 were transferred but under its misrepresentation that it is a plan transfer it stated the tariffed shortfall and termination charges must transfer. AT&T in Judge Bassler’s Court

then creates the new fraud that EVEN ON A TRAFFIC ONLY transfer the revenue and time commitments must transfer.

It's obvious Mr Brown is well aware of the record evidence and well aware of 2.1.8's terms and conditions; however, Mr. Brown and his co counsels Joseph Guerra and others have decided to engage in an intentional fraud on the NJFDC which AT&T also attempted on the FCC in 2006.

This case is over. Judge Bassler understood and agreed with AT&T and petitioners that 2.1.8 allowed traffic only transfer. He understood that petitioners did transfer the only two obligations listed within 2.1.8 and thus he understood petitioner's transaction was not being denied by the DC Circuit for fraudulent use. Judge Bassler understood that the issue of fraudulent use was NOT REMANDED and was thus a decided issue.

15 THE COURT: Let me just stop you there for a minute.

16 I think there's some loose language in one of your

17 briefs where -- I don't have the page number in front of me,

18 where you say the **DC Circuit remands the case to the FCC. I**

19 **don't see any language of remand.**

3 THE COURT: You don't think the DC Court knows how to

4 use the word **"remand?"**

Judge Bassler understood 2.1.8 allowed traffic only transfers and the fraudulent use issue was determined against AT&T. The issue his Court did understand was that the DC Circuit confusion over which obligations transfer under 2.1.8 was a NON-CONTROVERSY in 1995. The DC Circuit explicitly stated it was not able to review which obligations transfer as that was not a

controversy the FCC interpreted. Of course the reason why the FCC was not asked to interpret which obligations transfer under 2.1.8 was that there was no controversy in 1995 in Judge Politan's Court as AT&T and the Inga Companies as the Whitmer/Inga oral argument questioning shows agreed that revenue and time commitments do not transfer unless the lead/home account transfers.

Judge Bassler's referral was CREATED BY AT&T. It asked the FCC to decide precisely which obligations transfer and any OPEN ISSUES. There are no open issues for the FCC to decide. Judge Bassler's statement the DC Circuit Courts was not a remand of fraudulent use. There was No other controversies in Judge Bassler's Court regarding where section 2.1.8 allowed substantial traffic only transfers.

There was no controversy in Judge Bassler's Court as to whether AT&T can decide if a substantial traffic transfer can be determined a PLAN transfer. No "horse shoe" ---"well it is almost a plan transfer" controversy. Judge Bassler understood we are resolving a TRAFFIC ONLY transfer under 2.1.8.

The only open issue in Judge Bassler's Court was which obligations transfer under 2.1.8. AT&T has not presented any evidence to the FCC showing there was any other controversy in Judge Bassler's court other than whether 2.1.8 allowed a traffic only transfer in which the revenue and time commitments must transfer. However, that controversy was OUTSIDE THE SCOPE of the original fraudulent use controversy.

The FCC under the Administrative Procedures Act must only decide referred controversies based upon the determined facts of the District Court. The NJFDC understood section 2.1.8 allowed traffic only transfers and the facts of the case is that this transaction in question concerns a TRAFFIC ONLY transfer not a plan transfer or ALMOST a plan transfer. You're either pregnant or you're not pregnant!

The FCC has already heard AT&T's CLOSE ENOUGH TO A PLAN TRANSFER assertion under Tr8179 filed by AT&T on February 16th 1995. The FCC denied AT&T's ability to retroactively deny the January 1995 transfer based upon what AT&T asserted it had the right to do under 2.1.8. AT&T accepted that FCC decision and created Tr9229 to deal with substantial traffic only transfers without subjectively measuring INTENT TO DEFRAUD AT&T of ANTICIPATED SHORTFALL CHARGES by adding security deposits against potential shortfall on the plan that REMAINED WITH THE REVENUE COMMITMENT. The Tr8179 CLOSE ENOUGH ARGUMENT has been decided already and AT&T Counsel Carpenter conceded to the Third Circuit that the FCC denied AT&T's "close enough" assertion under 2.1.8. Once AT&T conceded that the FCC denied the CLOSE ENOUGH assertion it was a NON CONTROVERSY!!!

Based upon the referral sent by Judge Bassler and the fact that his Court accepted that the DC Circuit Court Decision was NOT A REMAND as to fraudulent use---and the obligation allocation does not expand the scope of the previous referral ----the FCC's JOB IS DONE!!! There are no open controversies within the scope of the 1995 referral. Judge Politan's 1996 Decision determined there was "NOTHING" that precluded the traffic from being transferred under 2.1.8.

It is conclusive that AT&T counsels intentionally lied to every court (3 Judges at the NJFDC, Third Circuit, FCC, DC Circuit Court) and tried to cover-up its lies. It is conclusive that there are no controversies within the scope of the 1995 referral. Furthermore, the FCC itself stated that its decision and that of the DC Circuit mean NOTHING if the NJFDC understood that AT&T did not have MERIT to raise a fraudulent use defense in the first place as the plans were shortfall immune at the time of the traffic transfer and AT&T concedes the plans were under pre-June 17th 1994 terms and conditions at the time of the January 1995 traffic only transfers of CCI to PSE and INGA to PSE.

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From: Town News [<mailto:townnews@optonline.net>]

Sent: Tuesday, March 07, 2017 7:02 PM

To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.Orielly@fcc.gov' <Mike.Orielly@fcc.gov>; 'Nancy_Dunn@cadc.uscourts.gov' <Nancy_Dunn@cadc.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'lcoven@optonline.net' <lcoven@optonline.net>; 'martha_tomich@cadc.uscourts.gov' <martha_tomich@cadc.uscourts.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>

Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>

Subject: RE: Mr Brown--Rule 11b subjects litigants to sanctions for insisting upon a position after it is no longer tenable.

Richard Brown

As you are aware you are petitioners designated contact for AT&T.

Since petitioners can't email these AT&T people directly can you please email them. As you are aware as counsel you are required by law to have made **"reasonable inquiry"** to AT&T executives concerning its position on 2.1.8.; regarding allocation of obligations on traffic only transfers before having made the bogus assertions without evidentiary support.

Please ask them if they are aware of the 06-210 case and invite them to file public comments at the FCC and comment on the attached FCC Comments.

It would be interesting to see if all these AT&T senior executives are behind your assertion to Judges Bassler and Judge Wigenton that revenue and time commitments transfer on a traffic only transfer under 2.1.8.

Your own counsel Mr Whitmer advised Judge Politan that AT&T has done thousands of traffic only transfers and never did the revenue and time commitments transfer.

Rule 11b subjects litigants to **sanctions** for **insisting upon a position after it is no longer tenable**.

Mr Brown--- **“Tenable”** left the train station in 1995.

When petitioners filed at the FCC the “former customer tariff comments and you called out of the blue asking how much petitioners wanted to settle for.

Moreover, YOU were personally involved in the case in 1996 when you advised the Third Circuit Court that it was “self-evident” under 2.1.8 that revenue and time commitments don’t transfer on a traffic only transfer.

Petitioners are filing with Judge Wigenton and in addition to damages we will be asking for **substantial sanctions** against AT&T counsel for the intentional fraud on Judge Bassler and Judge Wigenton, unless you produce 1 single traffic only transfer in which the revenue and time commits transfer under section 2.1.8.

On top of that you intentionally lied to Judge Wigenton that you addressed at the FCC “these alleged other transfers!”

The thousands of traffic only transfers that AT&T counsel Mr Fred Whitmer referred to in Judge Politan’s Court in 1995 in which the plan obligations did not transfer were all alleged?

Please contact your AT&T business executives and make reasonable inquiry.

Thank you
Al Inga President
Tips, Inc.

From: Town News [<mailto:townnews@optonline.net>]

Sent: Tuesday, March 07, 2017 4:21 PM

To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.Orielly@fcc.gov' <Mike.Orielly@fcc.gov>; 'Nancy_Dunn@cadc.uscourts.gov' <Nancy_Dunn@cadc.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'lcoven@optonline.net' <lcoven@optonline.net>; 'martha_tomich@cadc.uscourts.gov' <martha_tomich@cadc.uscourts.gov>;

'oig.hotline@usdoj.gov' <oig.hotline@usdoj.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>
Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>
Subject: RE: Mr Brown--

Thank you Mr Brown for confirming receipt.

We will await your response via email and upload to the FCC server.

You obviously do not have to respond. If you do not wish to respond I'm sure you can create some comical excuse for Judge Wigenton.

Please forward all emails to AT&T counsel Mr Joseph Guerra. Please advise whether Mr Guerra has confirmed receipt of the below questions.

Thank you

Al Inga

Group Discounts, Inc.

From: Brown, Richard H. [<mailto:rbrown@daypitney.com>]

Sent: Tuesday, March 07, 2017 3:36 PM

To: 'Town News' <townnews@optonline.net>

Cc: ray@grimes4law.com

Subject: RE: Mr Brown--

Received.

From: Town News [<mailto:townnews@optonline.net>]

Sent: Tuesday, March 07, 2017 3:33 PM

To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.ORielly@fcc.gov' <Mike.ORielly@fcc.gov>; 'Nancy_Dunn@cadc.uscourts.gov' <Nancy_Dunn@cadc.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'lcoven@optonline.net' <lcoven@optonline.net>; 'martha_tomich@cadc.uscourts.gov' <martha_tomich@cadc.uscourts.gov>; 'oig.hotline@usdoj.gov' <oig.hotline@usdoj.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>

Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>
 Subject: RE: Mr Brown--

Mr Brown

Please confirm receipt:

Show just one example in which the revenue and time commitments transferred under section 2.1.8 on a traffic only non-plan transfer and petitioners will drop all claims.

I will wait for your response before we upload this to the FCC website.

Petitioners are giving AT&T the opportunity to prove to all the FCC Staff and State Ethics Staffs that you did not intentionally engage in an intentional fraud on Judge Bassler and Judge Wigenton.

The Tr9229 tariff filing mandated a security deposit against potential shortfall and confirmed revenue commitments do not transfer on a traffic only transfer. You told Judge Wigenton that the security deposit had to do with the Inga to CCI plan transfer when her Court was addressing the Traffic only transfer to PSE. Even though petitioners were grandfathered from having to post security deposits are you telling the FCC that the fundamental terms and conditions of the tariff do not apply just because an AT&T customer is grandfathered? So, when a customer is grandfathered from having to post security deposits against potential shortfall those AT&T customers must transfer their revenue and time commitments on a traffic only transfer? Is that what your position is?

Petitioners don't expect you to respond. We are just proving to Judge Wigenton that you scammed the NJFDC silly.

Al Inga
 Group Discounts, Inc.

From: Town News [<mailto:townnews@optonline.net>]

Sent: Tuesday, March 07, 2017 1:22 PM

To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.O'rielly@fcc.gov' <Mike.O'rielly@fcc.gov>; 'Nancy.Dunn@cad.uscourts.gov' <Nancy.Dunn@cad.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'lcoven@optonline.net' <lcoven@optonline.net>; 'martha_tomich@cad.uscourts.gov' <martha_tomich@cad.uscourts.gov>; 'oig.hotline@usdoj.gov' <oig.hotline@usdoj.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>

Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>
 Subject: RE: Mr Brown--

Mr Brown

Six certifications have been presented in this case from other AT&T aggregators. All of them stated that under 2.1.8 the revenue and time commitments stay with the non-transferred plan. Additionally, AT&T business executives have stated that AT&T has never done a traffic only transfer in which revenue and time commitments transfer.

In 2014 you advised Judge Wigenton that AT&T had already addressed at the FCC “alleged other transfers of service” of other AT&T customers that transferred traffic only under 2.1.8 without transferring the non-transferred plans revenue and time commitment.

Here is AT&T’s 2014 Pg. 29 statement to Judge Wigenton:

“Again, they have also made these contentions to the FCC (see Brown Cert., Ex. O at 73-76 (discussing alleged ambiguity) and 174-178 (**raising alleged other transfers of transfers of service**), and AT&T has responded to those arguments **in that proceeding**.”

Richard ---Petitioners are going back to Judge Wigenton and would like to give AT&T the opportunity to point out where in the FCC record did AT&T address to the FCC AT&T’s reason why it allowed all other AT&T customers to transfer traffic only, without the revenue and time commitment transferring but refused petitioners.

Is AT&T’s current position that the 6 aggregator certifications and AT&T’s own employees and all AT&T’s former counsels---including Mr Whitmer who said to Judge Politan AT&T has done thousands of traffic only transfers and none had revenue and time commitments transferringare all “mistaken?” You and Joseph Guerra advised Judge Bassler that 2.1.8 does not allow traffic only transfers in which the revenue and time commitments transfer.

Remember Judge Politan was evaluating Fraudulent Use and he asked Freddy Whitmer about the quantity of traffic only transfers and the size of the transfers. He wanted to know how much exposure AT&T had after these traffic only transfers were done. How many beat AT&T for shortfall charges after the traffic only transfer was provisioned.

1995 NJFDC Oral Argument pg. 53 “But there are literally - - my guess is hundreds, if not thousands, of transfers that have happened **among aggregators** and aggregations plans.”

Did you lie to Judge Bassler that 2.1.8 does not allow traffic only transfers in which the revenue and time commitments don’t transfer? Or is it AT&T’s position that it did not lie to Judge Bassler and all these other AT&T customers were allowed to violate the tariff and engage in traffic only transfers ---that still continue today--- but you decided to discriminate against the Inga Companies and not allow it to transfer traffic only without the revenue and time commitments transferring.

So, what AT&T is incredibly saying is it’s not discrimination and unreasonable practice if AT&T allows all other AT&T customers to “violate its tariff” but doesn’t allow the Inga

Companies to also “violate AT&T’s tariff” by not transferring revenue and time commitments like all other AT&T customers?

AT&T’s position to Judge Bassler was that it denied the traffic only transfer under 2.1.8 because petitioners only transferred the 2 obligations listed within section 2.1.8 but did not transfer the revenue and time commitments.

If AT&T was not telling “a little fib” to Judge Bassler is AT&T taking the position that the thousands of other traffic only transfers that did not transfer revenue and time commitments were all done in violation of 2.1.8 and the ONLY traffic only transfer that AT&T decided to uphold section 2.1.8 was the Inga Companies transfer?

When AT&T released Tr 9229 that showed revenue commitments do not transfer on a traffic only transfer did AT&T suddenly change its position that revenue commitments don’t transfer --- but never notified the FCC of this tariff change? There is no change in the terms and conditions of section 2.1.8 from Jan 1995 through the November 1995 change. Did AT&T decide to make this obligation allocation change w/o an FCC filing?

Richard—Please point out where in the FCC record you addressed the other transfers as you advised Judge Wigenton in 2014. It appears as if you understood you had no evidence to support the all obligations fraud and you did a little maneuver on Judge Wigenton – that you addressed this issue at the FCC.

Where did you address it?

Al Inga
Group Discounts, Inc

From: Town News [<mailto:townnews@optonline.net>]

Sent: Monday, March 06, 2017 11:22 AM

To: 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.Orielly@fcc.gov' <Mike.Orielly@fcc.gov>; 'Nancy_Dunn@cadc.uscourts.gov' <Nancy_Dunn@cadc.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.ingle@fcc.gov' <john.ingle@fcc.gov>; 'lcoven@optonline.net' <lcoven@optonline.net>; 'martha_tomich@cadc.uscourts.gov' <martha_tomich@cadc.uscourts.gov>;

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 Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>
 Subject: RE: Mr Brown--

Richard

The attached is an overview why the FCC removed the case from circulation.

See DC Decision determined fraudulent use Against AT&T.

The other documents are decisions that are referenced.

Under the Administrative Procedures Act the Commission can only interpret tariff controversies that were within the scope of the original 1995 fraudulent use controversy.

The DC Circuit Decision as per Legal Directory Martha Tomich was not a remand and was the DC Circuits review of Fraudulent use which it ruled against AT&T.

Here is the in-depth overview.

Al Inga
 Group discounts Inc.

From: Town News [<mailto:townnews@optonline.net>]
Sent: Wednesday, February 22, 2017 9:29 AM
To: 'Town News' <townnews@optonline.net>; 'Ajit.Pai@fcc.gov' <Ajit.Pai@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deena.Shetler@fcc.gov' <Deena.Shetler@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'HermanE@dcobc.org' <HermanE@dcobc.org>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'Meredith.AttwellBaker@fcc.gov' <Meredith.AttwellBaker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.ORielly@fcc.gov' <Mike.ORielly@fcc.gov>; 'Nancy_Dunn@cad.uscourts.gov' <Nancy_Dunn@cad.uscourts.gov>; 'Neil.Grace@fcc.gov' <Neil.Grace@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Patrick.Carney@fcc.gov' <Patrick.Carney@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'Rule1.24@fcc.gov' <Rule1.24@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'jcasello@cvclaw.net' <jcasello@cvclaw.net>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'lcoven@optonline.net' <lcoven@optonline.net>; 'martha_tomich@cad.uscourts.gov' <martha_tomich@cad.uscourts.gov>; 'oig.hotline@usdoj.gov' <oig.hotline@usdoj.gov>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; 'pokin@giantpackaging.com' <pokin@giantpackaging.com>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'william.ziff@judiciary.state.nj.us' <william.ziff@judiciary.state.nj.us>; 'prosoftwarepack@yahoo.com' <prosoftwarepack@yahoo.com>
 Cc: 'rbrown@daypitney.com' <rbrown@daypitney.com>
 Subject: RE: Mr Brown--Traffic transfer case is off Circulation as it was properly determined as Moot...

Thank you Richard.

Now I have attached the 20-page PDF. The 06-210 case is Moot as you are aware since 2005 DC Circuit Decision when AT&T lost the fraudulent use defense. Richard –Did you really expect to

get away with the ALL OBLIGATIONS fraud with zero evidence ---especially when your own counsel Fred Whitmer testified in 1995 AT&T had already done thousands of traffic only transfers?

Richard—Advocacy is one thing---flat out fraud on Federal Judges and the FCC! Why would you do that even for a big client?

As indicated it is on the FCC website as it was filed last night.

Al Inga
Group Discounts, Inc.

From: Brown, Richard H. [<mailto:rbrown@daypitney.com>]
Sent: Wednesday, February 22, 2017 9:16 AM
To: 'Town News' <townnews@optonline.net>
Subject: RE: Mr Brown--Traffic transfer case is off Circulation as it was properly determined as Moot...

Mr. Inga, there was no attachment to your email.

Richard H. Brown | Attorney at Law | [Attorney Bio](#)



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BOSTON | CONNECTICUT | FLORIDA | NEW JERSEY | NEW YORK | WASHINGTON,
DC   

From: Town News [<mailto:townnews@optonline.net>]
Sent: Wednesday, February 22, 2017 8:58 AM
To: Ajit.Pai@fcc.gov; David.Gossett@fcc.gov; Deena.Shetler@fcc.gov; Eddie.Lazarus@fcc.gov; HermanE@dcobc.org; Jamilla.ferris@fcc.gov; Jane.Halprin@fcc.gov; Jay.Keithley@fcc.gov; Jennifer.Tatel@fcc.gov; Jessica.Rosenworcel@fcc.gov; Jim.Bird@fcc.gov; John.Williams2@fcc.gov; Jonathan.Adelstein@fcc.gov; Julie.Veach@fcc.gov; KJMWEB@fcc.gov; Karen.onyeue@fcc.gov; Kay.Richman@fcc.gov; Linda.Oliver@fcc.gov; Madelein.findley@fcc.gov; Matthew.Berry@fcc.gov; Meredith.AttwellBaker@fcc.gov; Michael.Copps@fcc.gov; Mignon.Clyburn@fcc.gov; Mike.ORielly@fcc.gov; Nancy.Dunn@cad.uscourts.gov; Neil.Grace@fcc.gov; Pamela.Arluk@fcc.gov; Patrick.Carney@fcc.gov; Randolph.Smith@fcc.gov; Richard.Welch@fcc.gov; Robert.McDowell@fcc.gov; Rule1.24@fcc.gov; Sharon.Gillett@fcc.gov; Sharon.Kelley@fcc.gov; Stephanie.Weiner@fcc.gov; Suzanne.Tetreault@fcc.gov; Zachary.Katz@fcc.gov; eric.botker@fcc.gov; icasello@cvclaw.net; john.Ingle@fcc.gov; lcoven@optonline.net; martha_tomich@cad.uscourts.gov; oig.hotline@usdoj.gov; phillo@giantpackage.com; pokin@giantpackaging.com; prosoftwarepack@yahoo.com; ray@grimes4law.com; robert.ratcliffe@fcc.gov; william.ziff@judiciary.state.nj.us; prosoftwarepack@yahoo.com
Cc: rbrown@daypitney.com
Subject: FW: Mr Brown--Traffic transfer case is off Circulation as it was properly determined as Moot...

Richard

Please reply all to confirm you have received this email with petitioners FCC filing.

The following are a few of the highlights of the attached 20 page PODF.

Petitioners have been advised that after 13 months review the FCC Commissioners have properly removed our 06-210 case from circulation. There was simply **no controversy within the scope of the original referral** that the FCC needs to interpret.

As per the **Administrative Procedures Act** the Commission is tasked to interpret **controversies**.

The FCC properly determined that there was **never a 2.1.8 controversy** amongst Judge Politan, AT&T and petitioners, as all parties agreed that 2.1.8 allowed traffic only transfers and clearly understood that the revenue and time commitments must stay with the non-transferred plan.

AT&T's sole defense as the FCC 2003 Order states was section 2.2.4 fraudulent use. AT&T asserted it could use section 2.2.4 to prohibit a permissible traffic only transfer. The attached PDF includes explicit statements from Judge Politan in 1995 regarding what the **controversy** was—fraudulent use—**not 2.1.8**.

Obviously, there was nothing within 2.1.8 to prevent the transfer--- that is why AT&T tried to **retroactively** change the terms and conditions of section 2.1.8 by filing at the FCC TR8179.

The FCC's R.L. Smith, David Nall and Judith Niche all were involved in denying Tr8179--- determining it would be a substantive tariff change and thus prospective.

Tr8179 was replaced with Tr9229 and prospectively added in November 1995 security deposits against potential shortfall—confirming plan obligations don't transfer. As you are aware AT&T in 2015 misled Judge Wigenton regarding Tr9229 as that tariff page conclusively determined revenue and time commitments do not transfer on traffic only transfers.

A defendant can have multiple defenses; however, the defenses must be based upon **one set of facts**. AT&T tried to simultaneously assert 2 sets of facts---- as AT&T asserted that all obligations would transfer **IF** it was a **plan** transfer. The fact is it was not a plan transfer as your counsel Mr. Whitmer conceded to Judge Politan and the FCC has already decided this in its Tr8179 denial.

AT&T was advised that it was not implicit within 2.1.8 that AT&T had the right to mandate that when substantial locations were transferred that AT&T could subjectively mandate the plan must transfer—to cause the revenue and time commitments to transfer.

AT&T's defense of fraudulent use was based on the proper fact that the CCI to PSE was a traffic only transfer---but that defense was denied due to AT&T's use of an illegal remedy. It had no merit to begin with anyway as Judge Politan properly determined the plans were pre-June 17th 1994 grandfathered.

Even though AT&T advised Judge Wigenton that it would not oppose FCC resolution, AT&T opposed the clarification of the FCC's January 12th 2007 Order. AT&T understood that the FCC had determined that Judge Bassler's 2006 referral on which obligations transfer under section 2.1.8 "did not expand the scope of the original referral" and thus was moot. Now that the FCC has reviewed the case for 13 months and properly determined there is not a controversy within the scope of the original referral the clarification of the January 12th 2007 Order no longer needs to be done. The Commissioners decision to remove the case from circulation is acknowledgement that the FCC has no controversy before it within the scope of the original referral that it can interpret.

AT&T of course knows it has engaged in an intentional ("all obligations of the transferor") fraud on Judge Bassler and Judge Wigenton and attempted this fraud on the FCC. The reason AT&T has never provided evidence to support the "all obligations of the transferor" fraud is NO EVIDENCE EXISTS! It was an INTENTIONAL FRAUD ON JUDGE BASSLER AND JUDGE WIGENTON. AT&T was advised last month to show ONE example of a traffic only transfer in which the revenue and time commitments transferred and petitioners would DROP THE CASE. You confirmed receipt, but of course AT&T knew it was engaging in an intentional fraud on the NJFDC and FCC.

Counsels for Sidley Austin and Day Pitney clearly worked in concert with in-house AT&T counsels to create a new controversy in Judge Bassler's Court in 2005 ----that revenue and time commitments must transfer on a traffic only transfer. AT&T attempted to cover-up the "former customer" language as evidenced with the attached PDF that has been FCC filed last night. The evidence within the PDF conclusively indicates that it was a brand-new controversy created in the year 2005 to justify why AT&T denied the traffic only transfer in **1995**.

So, petitioners are now going back to Judge Wigenton as the barrier to her Court lifting the stay was the fact that the case **was in circulation**. Now that the case has been reviewed and the FCC agrees with the conclusive evidence that there is no controversy within the scope of the original referral the case is moot and we now should be able to proceed to the damages phase.

We will bring this to Judge Wigenton's attention.

Al Inga President
Group Discounts, Inc.

END OF EMAILS

Al Inga President
Group Discounts, Inc.
Winback & Conserve Program, Inc.
800 Discounts, Inc.
One Stop Financial, Inc.

